VOL. XVII.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, [redacted] 1921

Term No. [redacted]257

[redacted]ARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPEL[redacted]TS,

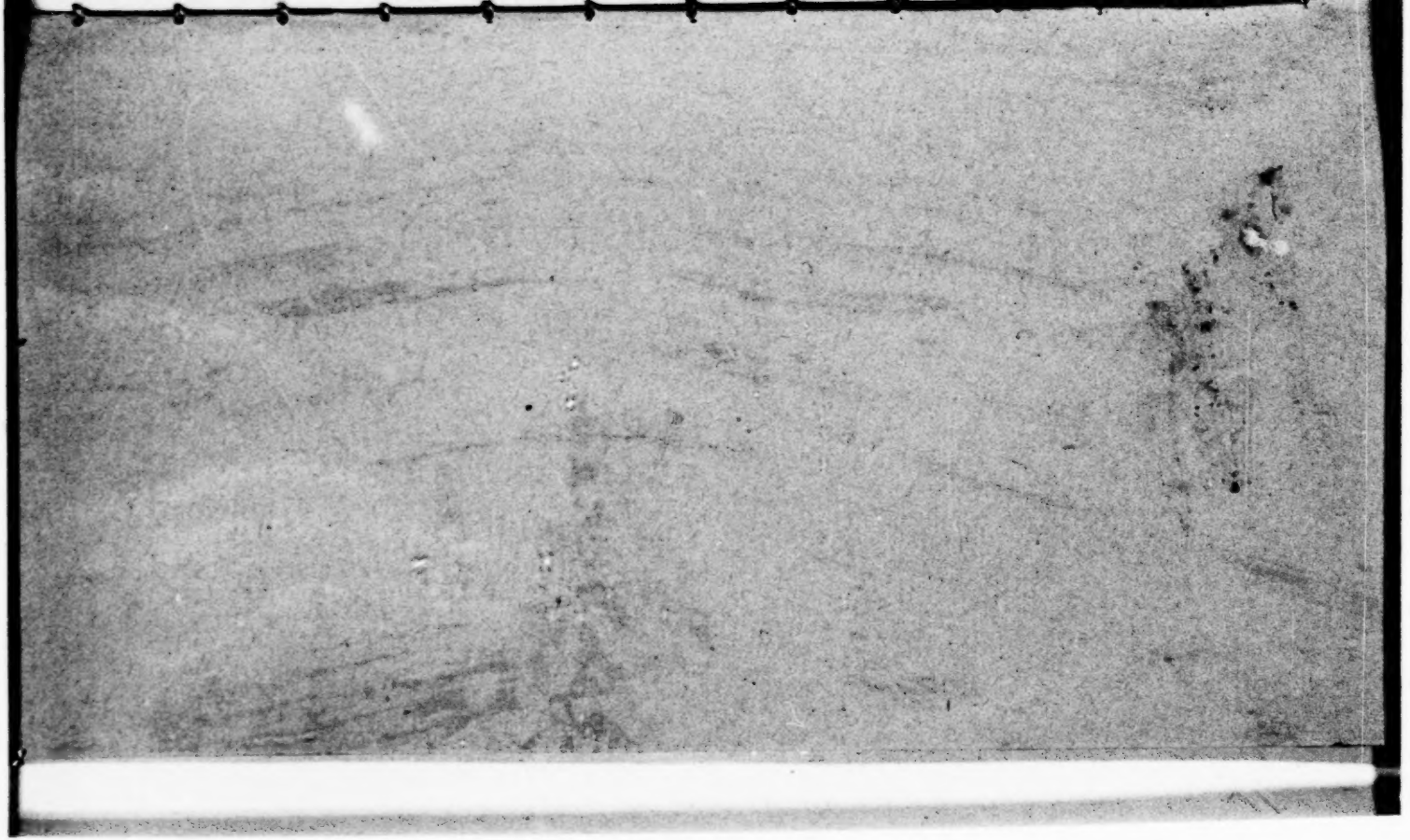
vs.

CONSOL[redacted]ATED GAS COMPANY OF NEW YORK, RESPONDENT.

[redacted]EAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1921

(File No. 28164.)



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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 44215

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 3, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton. 44216
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission.
MR. O'BRIEN, of Counsel for defendant Swann.

ROBERT A. CARTER resumed:

CROSS-EXAMINATION BY MR. CLARK:

Mr. Clark: I do not quite understand your Honor's ruling about these matters that were not charged in the year in which they were actually retired. I understand I am not to be allowed to ask any question about those? 44217

The Master: Yes, I say that is all fully spread on the record. If the purpose of your examination is to show that certain properties formerly retired and withdrawn on the books at one date, were in fact discontinued and out of use for a year or more prior to that date, I say that every one of those—

Mr. Clark: How can you say every one of them?

The Master: I do not know that I can say that, but it has been so fully covered I assume all of them must be.

Mr. Clark: They have brought out some, but not all.

The Master: You mean yesterday?

Mr. Clark: Yes.

The Master: Oh, I mean prior examinations in the record. I do not mean yesterday.

Mr. Ransom: Mr. Mrich was interrogated about a long series of those.

The Master: I would be perfectly willing to have you do it—that is, I think it is perfectly proper on your theory of the case—but I think it is fully covered. I am willing to take the chance of ruling as I do.

Mr. Clark: Of course, I do not understand all that is in this record, but I have taken these matters up with Mr. Maltbie, and I do not think they are fully covered.

The Master: I am going to let my ruling stand. Possibly I will not be able to have the summing up of this case before I go away—I will not, that is sure. If by any possibility we get the proof in, we are doing perhaps better than I expect now. But if you find during the adjournment, that I will have to take at the end of this week, that the record—I do not mean yesterday's record, but that there is not in the record what you want to bring out from Mr. Carter now, I will let you recall him when I get back, or you can take it up perhaps and cover it by a stipulation.

Mr. Ransom: We made up a very complete and detailed statement which showed the proof with respect to each of these parcels. We can't

you in a very few minutes, if you sit down with Mr. Vilas or Mr. Goetz and myself, as to each of those properties that you want to cover, the time they were withdrawn from service and when the use ceased. We can find that very quickly.

Mr. Clark: I am perfectly willing to do that.

The Master: And if there are any items not covered, they may be willing to stipulate it for you. I think it is all covered.

Mr. Ransom: If such is the case, beyond peradventure we would be very glad to stipulate it. I think all those matters are already in the 44222
record, put in by the defendants' representatives.

Q. Mr. Carter, will you take the figure for the 21st Street property, shown on your Schedule B, December 31, 1905, and will you add to it the additions shown on Mr. Teele's Additions to Manufacturing Plant, January 1, 1906, to December 31, 1918, for that station, in the sum of $507,477.48, and deduct the withdrawals shown on Mr. Teele's schedule, 21st Street station, from January 1, 1906, to December 31, 1918, and tell me whether the result obtained is the same as the result that you have on your Schedule B for December 31, 1918?

Mr. Ransom: Objected to as incompetent: the 44223
papers speak for themselves. It is purely mathematical.

The Master: Overruled.

Mr. Ransom: I call your Honor's attention to the fact, of course, that we have submitted a schedule showing certain deductions.

The Master: I will let Mr. Carter answer this.

Mr. Ransom: I call your Honor's attention to the fact that the schedule to which Mr. Carter's attention has been called is the defendants' exhibit and not the complainant's exhibit.

44224

Mr. Clark: You do not contend that it is not accurate, do you?

Mr. Ransom: You know the situation with respect to that. That was the old form that was gotten up to tie into the Court's findings.

Mr. Clark: You do not contend it is not accurate, do you?

Mr. Ransom: It has been fully covered, showing just the things that are in that, which are not within the category of—

The Master: Let me hear the question.

(The question was read by the stenographer.)

44225 Mr. Clark: I will let him take Mr. Teele's exhibit.

Mr. Ransom: But your Honor knows what they are doing. Mr. Teele's withdrawals, as your Honor knows, are made on a different basis than the book withdrawals here.

The Master: That is what Mr. Clark wants to bring out. I am going to let him bring it out. Overruled.

Mr. Ransom: We have shown both. Our theory of value and the theory of the rate base in this case was embodied in the proof which we presented on direct. The defendants have indi-

44226 cated a different—

Mr. Clark: Wait until it comes out and see what the difference is, and see if that is the reason.

Mr. Ransom: Here is the reason—Schedule E.

The Master: Apropos of what you have said, I am not entirely sure that I know your theory of values, or your claim of the rate base. What is it? What is your theory of the rate base?

Mr. Ransom: The present value of the property.

The Master: Value?

44227

Mr. Ransom: Yes.

Mr. Chambers: I could not quite hear him.

The Master: The present value?

Mr. Ransom: Yes.

The Master: How do you say that is shown?

Mr. Ransom: Shown by the proof which we presented on our direct case, for the purpose of this case. We do not claim that we did prove the full value of the property; we proved for the purposes of this case what we regard as a minimum of value.

The Master: You called experts to prove the value of real estate, did you not?

44228

Mr. Ransom: Yes.

The Master: How did you prove the value of the plant?

Mr. Ransom: We called experts, and we called public representatives whose values the defendants in our view, are not permitted to deny.

The Master: What public representatives did you call on value of plant?

Mr. Ransom: The Deputy Tax Commissioners.

The Master: On value of plant?

Mr. Ransom: Oh, on value of plant? I thought you referred to land.

44229

The Master: No.

Mr. Ransom: We called opinion evidence.

The Master: Whose?

Mr. Ransom: Mayer, Simpson and Preiss.

The Master: You proved their value in 1906?

Mr. Ransom: Yes, and we proved by other witnesses that the property is now worth at least as much as at that time.

The Master: What was it?

Mr. Ransom: A number of witnesses, including some of the defendants' witnesses. And we

also proved the book cost of additions to property from 1905 down to the present time.

Q. Have you made the calculation, Mr. Carter?

A. I have not made any calculations.

Q. You have made the addition I asked?

A. I made the addition of the valuation of December 31, 1905, which was $3,067,648.09.

Mr. Clark: Can I see Exhibit 367?

Mr. Ransom: He has got before him one of the defendants' exhibits, from which you are asking him to take figures.

44231 Mr. Clark: I say, can I see Exhibit 367?

Mr. Ransom: They are not the same, as you know. Exhibit 367 gives both book value and court value and the basis of withdrawals.

Mr. Clark: I object to the witness looking at it before I show it to him for the purpose of this calculation. I did not ask him to look at this one, I asked him to look at the other.

The Master: Does it make any difference in the figures?

Mr. Clark: What?

The Master: Does it make any difference in figures?

44232 Mr. Clark: That is what I am not sure of. I would just as soon calculate it by this method.

The Master: If it makes any difference in figures, I am going to rule out that original Teele table.

Mr. Ransom: Gotten up on a basis which your Honor rejected.

The Master: That is, rule it out of this question, because the complainant did not offer it; it is not part of the complainant's proof. If your question is directed to the Teele exhibit that was offered, I will let it stand.

Mr. Clark: All right, I will direct it to that.

Mr. Ransom: To Exhibit 367.

Mr. Clark: Yes, I will direct it to that one.

The Witness: I notice that this—

Q. Well, will you make the calculation, Mr. Carter?

A. I have made a calculation—I have not made any calculation, but I had added to the value of the property, the investment in the property as of December 31st, as shown by Schedule B, the amount that appears upon a statement which you have shown me, in which 21st Street is shown as $507,477.48, and I have de- 44234
ducted an amount shown in another statement which you show me, which I find is book value, items identified and items not identified showing that in some respects it was an estimate and not an absolute figure, which appear to aggregate the same amount as shown in your schedule, namely, $131,858.35.

Q. Will you subtract from the total that you have there the total amount of withdrawals that Mr. Teele shows on his schedule for the 21st Street plant?

A. I do not know whether this is on Mr. Teele's schedule or not.

Q. It is Exhibit 367, produced by the complainant.

A. I do not know that the two are in any way iden- 44235
tical.

Q. That is what I want to find out. Will you make that calculation?

A. Yes, I have made that calculation. It leaves a balance of $4,043,267.22, which is substantially more than is shown by the Schedule B, Exhibit 472. Do you want me to look through here and see what that may be attributable to?

Q. They do not agree, that is the point.

A. There is nothing in common between the two, apparently.

44236 Robert A. Carter, Cross.

Q. You add Mr. Teele's additions and deduct his withdrawals from your figure of 1905 and you do not get your figure of 1918; is that correct?

Mr. Ransom: Objected to as incompetent and improper. We submitted Schedule E, which shows certain property which was on the books as of December 31, 1918, which is not claimed by the company to be used and useful as of December 31, 1918, and hence to be deducted from the total cost shown in Schedule A.

The Master: I will allow the question.

44237 Mr. Ransom: Exception.

A. I have already stated that the amount derived from making the additions and deductions you requested indicates a larger sum than is shown in Schedule B.

Q. What is the difference, Mr. Carter?

A. $226,983.70. That is the difference between $4,043,267.22 derived in the manner indicated, and using your figures, and the amount shown in Schedule B, or Exhibit 472, of $3,816,273.52.

Q. Can you account for the variance?

Mr. Ransom: I object to the question, your Honor. The Teele schedules, of course, are

44238 based upon the Court valuation, and the testimony of the witnesses, received in the prior suit. These schedules submitted in rebuttal are based on the defendants' theory of book cost and actual outlay investment.

Mr. Clark: Mr. Teele's statements are the items that he deducted or headed "Book Value."

Mr. Ransom: That is over my objection and exception, because it is perfectly obvious where the difference arises.

Mr. Clark: If it is obvious he can very easily tell us, Mr. Ransom.

A. The two exhibits are not in any respects similar

as to their arrangement, and therefore it might require quite a while to discover just wherein the two exhibits differ from each other in their—

By the Master:

Q. That Exhibit 472, Mr. Carter, starts with the book entries in 1884, based upon the Rowland Appraisal?

A. Yes, sir.

Q. And it follows up with additions and withdrawals from that point?

A. Yes, sir.

Q. Mr. Teele's exhibit, as I understand it, starts 44240
with some values proved in 1905 and 1906, and adds additions and withdrawals from that point; is that the idea?

Mr. Ransom: Yes.

Mr. Clark: That is not the point. You have taken Mr. Carter's value at 1905, not Mr Teele's. We have added Mr. Teele's additions and withdrawals to Mr. Carter's value in 1905, and there is no difference in the basis.

Mr. Ransom: Absolutely, there is an absolute basis. Mr. Teele's additions and withdrawals relate only to the property that was valued by the testimony in the prior proceeding. If there were 44241
items of property which apparently were not valued in the former proceeding, and have since been withdrawn, of course, they would not appear in the Teele tabulation.

The Witness: I will state another reason for the difference. Mr. Teele found that in starting with the 1886 appraisal, made by Mayer—

Q. 1906.

A. 1906 appraisal, made by Mayer—that Mayer included in his appraisal, which was supposed to have been as of December 31, 1905, certain plant and equip-

ment which was shown by the books to have been paid for subsequently, that is during the year 1906—quite substantial amounts of property paid for in 1906. Now, he could not very well include those in additions to the value found by Mayer, they were already there, and he eliminated them in arriving at the book value of additions to the appraisal made by Mayer, and it would take a little while to dig them out. I do not know whether he itemized and listed them or not.

Mr. Ransom: That was all gone into on his examination. There is a statement there.

44243 The Witness: Yes, I think that may possibly explain the difference.

The Master: In the interests of time, I will rule that, Mr. Carter having brought out the fact that there is a difference, the burden is on the complainant to show the difference if it is not already shown in the record. So that you need not bother with it any more, Mr. Carter.

Mr. Ransom: We showed that difference about five or six months ago.

The Master: All right, that is your responsibility. Mr. Clark has pointed out that there is a difference, and if it does not appear in the record, why, I think the burden is on you to bring

44244 it out.

Mr. Ransom: Of course $80,368.48 of the difference is shown on the face of Schedule E.

The Master: Do not let us argue it, Mr. Ransom. I am making the ruling in the interests of time.

Mr. Ransom: I understand.

By Mr. Clark:

Q. Mr. Carter, would you make the same calculation for the 14th Street station?

44245

Mr. Ransom: Objected to.

The Master: You need not do that, Mr. Carter. I will take Mr. Clark's statement calling the Court's attention to the fact—

Mr. Clark: The point is about the 14th Street station, that it does agree.

The Master: It does agree?

Mr. Clark: Some of them do and some of them do not.

The Master: It does agree?

Mr. Clark: Some of them do.

The Master: Then I will take your statement that the 14th Street station appears to agree.

44246

Mr. Clark: The 21st Street station differs, the 44th Street station differs, the 99th Street station differs, and the rest agree.

The Master: All right, I will take your statement that you call attention to the fact on the face of the statement, that those differences do appear. If Mr. Ransom is willing to let the record stand as it is, that is his funeral, you need not worry about that. Mr. O'Brien very properly refers to the fact that the burden of proof is on them, not on you.

Mr. Clark: I understand that.

The Master: If they bring in inconsistent statements and they do not agree—

44247

Mr. Clark: But, of course, I am entitled to show it. If they concede it, all right; if they do not concede it, I must show it.

Mr. Ransom: I do concede it.

The Master: It is a question for concession, for the two papers speak for themselves.

Mr. Ransom: Any reproduction value based on the present theory would necessarily differ from values based on book cost theory.

The Master: Let us get along to something else.

Q. Mr. Carter, prior to 1905 did you not carry upon the books an account called "Depreciation"?

Mr. Ransom: I think that has been fully covered.

The Master: I will let Mr. Clark ask that. Mr. Clark apparently has some reference to a prior record that he wants to bring out.

Mr. Ransom: You would not allow us to go into it, when I tried to go into it, because you said it had been fully covered. It was fully covered when I tried to bring it out.

44249 Mr. Clark: I tried to do it again on rebuttal.

A. Prior to 1905 we had, as we had subsequently to 1905, an account which I have described as one which started with no balance at the beginning of the year, into which was charged plant and equipment withdrawn from service, and which at the end of the year was closed out in its entirety, either into profit and loss account, as used to be done formerly, or against any sum representing a provision for that expense or that element of cost set up during the year.

Q. And that was called a depreciation account?

A. That suspense account was called depreciation account. It was used when the term had not—

44250 The Master: You have answered it, Mr. Carter. Is there anything in that other record inconsistent with this, Mr. Clark?

Mr. Clark: Inconsistent with that statement?

The Master: Yes.

Mr. Clark: No, I just wanted to bring that out.

Q. And in 1906 you set up a contingent account which you stated had been opened in addition to the depreciation account; and as you have already explained, is carried into operating account, or depreciation account operating as an expense account, until

the end of the year, when it shows the actual expenditures for replacements and renewals during the year?

A. That is the depreciation account which I have just described.

The Master: There is no sense of reading the prior record unless there is something inconsistent with what he says here.

Q. The uniform system of accounts, page 28, calls for an account called "Accrued Amortization of Capital"; is that correct?

Mr. Ransom: I object to the question. That was all gone over with Mr. Brundage, it was all 44252
gone over with Mr. Teele, and it was all gone over with Mr. Carter on his direct testimony. You would not allow me to go into it the other day.

The Master: I am going to permit Mr. Clark to ask a few questions. What is the point?

Mr. Clark: The other day they took much exception to the fact that Dr. Weber had called this schedule "accrued amortization."

Mr. Ransom: He called it depreciation reserve. That is what we took exception to. But it is not any such thing.

Mr. Clark: That is what is in this uniform 44253
system of accounts as Depreciation Reserve.

The Master: You did not have to ask Mr. Carter anything about that: that book is in evidence, is it not?

Mr. Clark: It is the fact that they carried it as accrued amortization of capital, this very contingency account.

A. It never appeared under the title of accrued amortization of capital.

Q. Didn't you report it to the Public Service Commission as accrued amortization of capital?

A. Exactly, as we had repeatedly stated to them that it was an item of renewal and contingency.

By the Master:

Q. The form of the Public Service Commission required a return under that heading?

A. Required a return under that heading.

Q. And you made a return under that heading?

A. Insofar as the item of accrued amortization of capital was concerned, that account carried, as I have explained before, the amount which the company under the direction of the Commission provided annually for the purpose of current repairs only. Against that account each year was carried the actual expenditures for repairs. The balance was perhaps more or less considerable, as the estimate for repairs exceeded the actual expenditures. That ran along for three or four years, and the balance was finally, as I stated, closed into profit and loss account, and the account accrued amortization of capital closed on our books.

The Master: I will not take any more on that line, Mr. Clark, because I do not think the matter of particular forms or particular accounts has any bearing upon the issue in this case. The complainant company is entitled to a fair return upon the value of its property—I think that is the language of the decisions in the cases. That being so, there is only one way to find out what is a fair return, and that is how much it actually costs to make gas; in other words, how much material and labor goes into it, how much taxes are necessarily paid, how much commercial expenses are necessarily paid, and the like. Now, that is X cents, and if that shows, we will say to illustrate, ten cents profit, that ten cents represents the

earnings on the value of the property used. I do not care how they keep their accounts or what reserves are set up; what difference does that make?

Mr. Clark: This question of depreciation is a matter which you have taken questions on, theoretical questions, and this goes to their practical application of the principle to their accounts.

The Master: That may be, but am I not right in my statement of the situation, that I must find out how much profit they make on a thousand cubic feet of gas, and apply that to the base, namely, the value of their property used in the 44258
gas business?

Mr. Clark: In finding the base you would have to rule one way or another on your theory of depreciation.

The Master: If that is the purpose of it, I think it is sufficiently covered for that purpose.

Mr. Ransom: The resolutions are in evidence, the correspondence with the Commission is in evidence.

The Master: I shall rule it is sufficiently covered for that purpose.

Mr. Clark: I except to your Honor's ruling on that. That is all I have. 44259

Mr. Ransom: I think I have just a few questions.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Carter, is it a fact that the cost and accounting records of the Consolidated Gas Company, insofar as they account for the quantity of oil used in the manufacture of gas, are based upon the quantity of oil reported by the station superintendent in his monthly report of manufacture to have been used during the month covered by his report?

Mr. Clark: I object to the question.

The Master: I will not allow the question.

Mr. Ransom: Exception.

Q. The quantity reported in the monthly report of manufacture as having been used is computed, is it not, by deducting from the inventoried quantity of oil on hand at the beginning of the month, plus the invoice quantity of oil received during the month, the inventoried quantity of oil at the end of the month?

The Master: I will not allow the question.

Mr. Ransom: Exception.

44261 Q. Are the daily records of oil, as noted in the station records of the General Office copy of the records, at all used in the company's accounts?

The Master: I will not allow the question.

Mr. Ransom: Exception.

Mr. Chambers: I move to strike out all Mr. Carter's testimony—

The Master: I requested before, Mr. Chambers, and repeat the request, that motions to strike out be reserved until the end of the case.

Mr. Chambers: Well, I would like to make them here now.

The Master: Then proceed.

44262 Mr. Chambers: I move to strike out Mr. Carter's exhibits, Complainant's Exhibits 474, 473—I will state them in order—Exhibits 471, 472, 473, 474, 475, 476 and 496.

The Master: Motion denied.

Mr. Chambers: And any others that I have not got the numbers of. Exception.

The Master: I do not rule on any others that you have not the numbers for.

Mr. Chambers: I move to strike them out.

The Master: You mean the Schedules A to F?

Mr. Chambers: Yes.

44263

The Master: You mean the Schedules A to F?

Mr. Chambers: And then the two summaries. On the ground that they are made up from documents and books and papers and data that are not in evidence.

The Master: Motion denied.

Mr. Chambers: Exception.

Mr. O'Brien: On the further grounds stated in my objection as to the original Teele exhibits—I think the date was December 17, 1919.

The Master: Motion denied.

Mr. O'Brien: On the further ground that the witness has not shown, or has shown on the stand 44264
that he did not check up these figures, according to the interpretation of those words. He has not reviewed them; he has taken the papers that were gotten together by Mr. Davidson or some other of the many employees of the company, and used them, without making an audit himself.

The Master: Motion denied.

Mr. O'Brien: Exception.

Mr. Ransom: Quite a little time ago, a couple of weeks ago at least, or three, Mr. Clark put in evidence the sworn reports of these gas testers, and was to make up immediately a tabulation. At that time he had not made up a tabulation cover- 44265
ing 1918, which of course was the tolled period year. Tabulations on the other years 1916, 1917 and 1919 were to have been made up immediately and finished. We have not received them. The 1918 tabulations of the sworn reports as received contain errors, and I think we ought to have a chance—or we ought to have had those long before.

The Master: Why haven't they got them, Mr. Clark?

44266

Mr. Clark: I have no stenographers myself and I sent them to the corporation counsel.

The Master: The burden is on you to provide it. I told you to get it. I want them here tomorrow morning. I do not care how many stenographers you have, or what is done. I want them here tomorrow morning.

Mr. Clark: I will see what can be done.

The Master: You cannot offer in a couple of million papers like that and not have a tabulation prepared for me.

Mr. Ransom: We ought to have a chance be-
44267 fore the case closes to show the errors in the tabulations.

The Master: You will have a chance, but I want that done. Has any work been done on it?

Mr. Clark: Yes, they have been working on it right along.

The Master: How much has been finished?

Mr. Clark: They have had four girls working. Only one girl can work on a book at a time.

The Master: How much is finished: what year is finished?

Mr. Clark: Well, they are doing all four years at once; they are running right along.

44268 The Master: I want everything that is ready here tomorrow morning.

Mr. Ransom: The trouble seems to be, instead of tabulating the sworn reports which are in evidence, they are tabulating the books.

The Master: I do not care how they are doing it.

Mr. Clark: That was the understanding, as the Master directed me to do.

The Master: All right, examine Mr. Teele.

Mr. Chambers: Is he ready for cross?

The Master: Yes.

Mr. Clark: May Mr. Cohen take that matter up with Mr. Vilas now, Mr. Ransom?

Mr. Ransom: I think so.

ARTHUR W. TEELE resumed:

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Have you your Exhibit No. 485, Mr. Teele, before you?

A. I have.

44270

Q. For caking coal, or all your figures, not only that but all of them—are they taken right from the books of the Astoria Light, Heat & Power Company, without change or alteration?

A. Referring to what?

Q. Any figures; all the figures in that exhibit.

A. They are taken either from the books or records, except where they are computations.

Q. Where are there any computations? Show me one.

A. All of the figures appearing under unit price and all of the figures appearing under materials per thousand cubic feet of gas, and all of the figures appearing under cost per thousand cubic feet made are computations.

44271

Q. Well, you take that first item, "Caking Coal," the quantity tons you took right from the books?

A. The quantity is taken right from the report of manufacture. The quantity tons does not appear on any books of account that I know of.

Q. Where did you get it from?

A. I just stated.

Q. The book of manufacture at the Astoria plant?

A. No, I did not say so.

44272 Arthur W. Teele, Cross.

Q. What did you say?

A. I said I took it from the report of manufacture.

Q. Isn't it a book?

A. I say again that I did not take it from a book. I took it from the report of manufacture.

Q. You did not understand me. Don't get excited, now. I say is not the report of manufacture a book?

A. It is not a book.

Q. What is it, a lot of slips?

A. It is a sheet.

44273 Q. And you took it from that?

A. I did.

Q. And that is the Astoria Light, Heat & Power Company's report of manufacture?

A. Yes.

Q. And that is not in any book?

A. I don't know. The one I took it from is a sheet.

Q. How do you know that quantity is correct for the number of tons of coal used?

A. It is the quantity reported by the superintendent of the plant.

Q. You took his word for it?

A. I have relied upon those quantities reported,

44274 substantiated by the inventories reported, together with the invoices.

Mr. O'Brien: I move to strike out the addendum "substantiated by the inventories reported, together with the invoices."

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Computed it from what, the unit price? What did you use as the basis?

Mr. Ransom: That was specifically answered, that identical question, on his direct-examination.

The Master: I will let him answer it again.

A. By dividing the dollars shown on this statement by the quantities shown with respect to each item.

Q. Where did you get the dollars shown?

A. From the ledger of the Astoria Company.

Q. The labor item, you got that, did you, from the ledger?

A. I got all of the dollars from the ledgers.

Q. The $45,087.65?

The Master: The witness states he got all of the dollars from the ledger.

Q. The unit price per pound of coke, the residuals, where did you get that from? 44276

A. By computing it.

Q. Using the number of pounds?

A. Yes.

Q. And the dollars?

A. Yes.

Q. Is that true of coal tar?

A. It is true of all of the figures appearing under "unit price" and under "materials per thousand cubic feet made" and under "cost per thousand cubic feet made"—they are all computed upon the figures shown in this statement.

By the Master:

Q. This is 1918 you are talking about? 44277

A. This is 1918.

Q. All the answers you are giving now apply to 1919?

A. They do.

Q. Same statement?

A. The same statement.

Q. The amount arrived at in the same way?

A. From the same sources of information.

Q. So there is no necessity of repeating the same questions for 1919?

A. There is not.

Q. Your answers will be precisely the same; is that correct?

A. Yes.

By Mr. Chambers:

Q. The bench and boiler fuel, did you ascertain that in the same way that you did caking coal?

A. Yes.

Q. The enriching cost, the gallons of oil is that Ravenswood works? You do not say, and I assume it is oil. Is it?

A. Yes, that is taken from the bills rendered by
44279 the New Amsterdam Company, taken from the vouchers of the Astoria Company in payment of those bills.

Q. That is, you are speaking now of the 2,017,112 gallons?

A. Yes.

Q. So you examined the vouchers of the New Amsterdam Company for one thing, to ascertain that quantity of gallons?

A. I did not.

Q. How did you do it?

A. I examined the vouchers of the Astoria Company which were issued in payment of bills rendered
44280 by the New Amsterdam Company.

Q. You spoke a minute ago of the New Amsterdam Company.

A. I did, and I just repeated it—bills of the New Amsterdam Company.

Q. How about that quantity right underneath, gas oil, Astoria works?

A. That is a computation, the result of a computation based upon information shown on the report of manufacture, as made in the accounting office of the Astoria Company, the computations of which we have checked.

Q. The credit for tar, where did you get that figure?

A. It comes from the same source.

Q. What was done with that tar, do you know? Was it sold, or did you ascertain to whom it was sold?

A. Yes.

Q. Whom was it sold to?

A. My recollection is that such tar as was sold was sold to the Barrett Manufacturing Company.

Q. And they received 5.8 cents a gallon for it?

A. I do not know what you are reading from.

Q. I am reading the credit for tar. 44282

A. If you are referring to the .058—

Q. The unit price.

A. (Continuing.) Which is the unit price per gallon of tar, for tar recovered from oil used for enriching purposes at the Astoria works, that is the price which is allowed for the tar.

Q. You do not know what price they sold it for, then?

A. Why, I have not it in mind, I think it was about six cents. I can refer to my working papers and tell you what they did sell it for.

Q. Will you please do it?

A. The average price realized for coal tar sales 44283 was 5.936 cents per gallon.

Q. That is a little more than the figure used isn't it?

The Master: He said that before. He said it was about six cents.

Q. Why didn't you use or give credit for the exact unit price per gallon?

A. That is the computation of gallons made by the company, and the dollars allowed by the company in their calculations for manufacture.

Q. How many gallons did they sell at .05936?

Mr. Ransom: You are referring now to water gas or coal gas?

Mr. Chambers: He knows what I am referring to. I am right on a certain line here. We are talking about the same figure, the credit for tar.

Mr. Ransom: There are two items.

Mr. Chambers: There are not two items. We are talking about one item, and I am asking him why he did not give the full credit for that tar.

44285 A. Now, what is the question, Mr. Chambers?

Q. How many gallons of tar they sold the Barrett Company at .05936, or whatever it was, or six cents per gallon?

Mr. Ransom: He has not said there was any sold the Barrett Company.

A. I did not say that any of it was sold to the Barrett Company at that price. I said that was the average price realized from all sales during the year.

Q. Mr. Teele, you told me a minute ago that your recollection was they sold some tar that year to the Barrett Company for six cents.

The Master: About six cents, he said.

44286 Mr. Chambers: About six cents.

Q. (Continued.) Now, I am asking you how many gallons of tar they sold the Barrett Company at six cents, or any other figure?

Mr. Ransom: Water gas or coal gas tar?

By the Master:

Q. Have you got it subdivided, Mr. Teele, between water gas tar and coal gas tar?

A. This is all of water gas tar.

Q. What was the total quantity?

A. The total quantity sold was 1,587,250 gallons.

Q. And what was the range of price?

A. I have not the range of price. I have the total amount received and the average figured, but I have not the price set down for each sale.

By Mr. Chambers:

Q. Your average, you said, was .059?

A. I have divided the total amount received during the year, the total amount of the sales, by the total quantity sold and I get an average price of .05936.

Q. Why didn't you use that figure there for a credit?

The Master: He has already answered it. He used the credit that the books showed and the 14288
amount realized, and he simply made a tabulation.

Q. You did not ascertain how much was sold at the different prices?

A. Well, I have just answered your question, Mr. Chambers, I think, when I said that I had set down the sales and the amounts, and I had the total sales, but I had not the price for the individual sales, the price per gallon.

Q. Can you tell how high the highest price was per gallon?

A. I have not the individual price of sales set down.

Q. You did not set it down at any time? 14289

A. I have not set it down here.

Q. I am not asking you that. Have you it in your working papers?

A. I have my working papers before me, and I have not the price of the individual sales set down.

Q. Did you take off the price of the individual sales when you were working on them?

A. No.

Q. Not at all?

A. No, I haven't it tabulated anywhere.

Q. So you do not know how high that ran per gallon?

The Master: How could you strike the average?

The Witness: By setting down the total gallons and the total dollars, dividing the total gallons by the total dollars. I was not interested in the individual sales, except the average.

Mr. Ransom: Those were put in evidence by Mr. O'Brien.

Q. The quantity of gallons, you say, sold, is far
44201 in excess of this 451,761?

A. Why, certainly.

Q. Why did you use just 451,761?

The Master: Because that was the amount used for enriching purposes.

Q. How did you know that was the amount that was used?

A. That is the amount that was computed by the company to be used for enriching purposes, based upon information furnished by the engineers.

Q. The information furnished to you by the engineers?

A. No, the information was furnished to me by
44202 the accounting office of the Astoria Company, showing the formula under which the computation is made, the information for which formula comes from the report of manufacture monthly.

Q. I do not yet see why it could not be said that that 451,761 gallons was the tar that was sold the Barrett Company for at least, say, six cents?

A. Because the tar which was recovered from the oil used for enriching purposes became a part of the tar which was recovered from the oil used by the company in making water gas tar. It all becomes water gas tar, and it is all sold from the same stock. They

are no more separated than you can separate the moneys which are deposited in a bank and are withdrawn subsequently.

Mr. O'Brien: I move to strike out that last sentence.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. What became of the balance of the tar, the difference between this 451,761 and the million and some odd you spoke of?

A. Do you speak of the balance of the tar? I do not know what you mean. 44294

The Master: He does not, either. And you cannot, in the nature of things, understand what you are saying.

Q. What is the difference between the 451,761 gallons and the million you spoke of; where is that?

The Master: You are repeating the same question. It is perfectly obvious that you do not understand what you are asking.

Mr. Chambers: Yes, I do.

Mr. Ransom: This item he is interrogating about relates only to the credit on the enrichment.

The Master: They sold a million and some- 44295
thing?

Mr. Chambers: Yes, and this is a part of it.

The Master: What?

Mr. Chambers: This 451,761 is a part of it.

Mr. Ransom: The part realized on enrichment.

Mr. Chambers: Where is the rest of it in his tabulation, the credit for it?

The Master: The rest of what?

Mr. Chambers: The difference between a million and 451,761.

Mr. Ransom: Look at Sheet 2 of the water gas manufacture.

Mr. Chambers: I am asking him.

Mr. Ransom: You are talking now about coal gas manufacture.

The Master: Do you mean where did they get the balance of the million?

Mr. Chambers: No, I mean, where has he given credit for it in his tabulation?

The Master: Why don't you say so.

Mr. Chambers: I was saying that.

44207 The Master: No, you say it now.

Mr. Chambers: I say, where is the rest of the tar?

By the Master:

Q. Do you understand what Mr. Chambers wants now?

A. His question is unintelligible to me.

Q. I will try to make it intelligible. You show a credit here for tar under this item of enrichment cost, of four hundred and some odd thousand gallons?

A. Yes.

Q. You show that there was in fact sold over a million gallons?

44208 A. Yes.

Q. Where do they get the balance of that, and where do you give the consumer credit for it, for the tar sold?

A. They recovered the tar from the water gas oil used in making water gas.

Q. Is that shown on any table?

A. It is.

Q. On which table?

A. Exhibit 485, Sheet 2.

Q. And do you give any credit to the consumer for the amount realized?

A. There is shown the amount realized from residuals produced from the manufacture of water gas tar.

Q. And if Mr. Chambers will look at these figures he will see all of this right out on the statement?

A. I do not know whether he will or not. He should.

By Mr. Chambers:

Q. Well, it is 4,790,109 there.

A. The manufacture of water gas shows a residual called water gas tar, and in the manufacture of the coal gas they have attributed part of the recovery of the tar to the amount of oil used in enriching the coal gas. The total amount of residual tar recovered is both used and sold, and I have given you the amount of the total sales. I have also shown here the amount that is calculated as being used for the purpose of enrichment. 44300

Q. This water gas tar, you have it at .061 a gallon?

A. Well, it happens to be the average for the year. We are dealing with the yearly totals here.

Q. Gas making labor you have at 7.7 cents, or .0770. That amount you took right off the books; there is no computation or anything about that, is there? 44301

A. What?

Q. Gas making labor.

The Master: Which part of it?

Mr. Chambers: Any part of it.

The Master: Of course there is. Unit prices are computations.

Mr. Chambers: No, there is just one amount here, $236,597.38.

The Master: And it is carried into the last column where?

Mr. Chambers: What?

The Master: Where is it carried, into the last column?

Mr. Chambers: .0770.

The Master: That is a computation.

Mr. Chambers: I did not ask him about the cost per thousand feet, of course.

Q. What gas making labor did you include in that $230,507.38?

Mr. Ransom: Objected to. That has been fully covered.

44303 The Master: Overruled.

Mr. Chambers: Fully covered where, and when?

Mr. Ransom: The same classification that has been used all the way through.

The Master: The witness has not said so yet.

Mr. Ransom: Why, he said so on direct.

The Master: Where did you get that gas making labor?

A. It is taken directly from the ledger accounts.

Q. What kind of labor did you put in it?

A. The labor that is distributed to that account by

44304 the superintendents of manufacture.

Q. Who are they, what are they, what do they do; do you know anything about it?

A. I do not know. I have not watched them at work, and I do not know the men. I have taken the distribution of labor as made by the superintendents at the works.

By the Master:

Q. You have made up a tabulation of the books, have you, Mr. Teele?

A. I have.

Q. That is all you have undertaken to make; that is all you undertake to say this statement is?

A. This statement is a tabulation of the books. Every figure is taken from the books.

By Mr. Chambers:

Q. If the books are wrong the tabulation is wrong?

A. If the books are wrong the tabulation may be wrong—will be wrong. I have gone behind the books.

The Master: Are the books wrong?

The Witness: No.

Mr. Clark: I object to that question and move to strike it out. 44306

Mr. Chambers: I object and move to strike it out.

The Master: Motion denied.

Mr. Clark: Exception.

Mr. Chambers: Exception.

Q. Do I understand this Exhibit 485 right, that cost—

The Master: Will you undertake to say whether Mr. Chambers understands that exhibit right or not?

The Witness: I will not.

Q. You say the net cost of making coal gas at the Astoria plant in 1918, if their books are correct, is .3396 per thousand cubic feet; is that right? 44307

The Master: For the items included on page 1.

A. For the items included on that—

Q. Well, there is not anything left out, is there?

The Master: Oh, yes, there is.

A. Yes.

The Master: Look at page 3. Look at page 3 and you will find additional items.

Mr. Chambers: That is water gas.

The Master: No, page 3.

44308 Arthur W. Teele, Cross.

Q. What do you call this net coal gas made, .33%?

The Master: I will not allow that question, because the Sheet 1 of Exhibit 485 shows all of the items which result in .33%.

Mr. Chambers: Exception.

Q. What do you mean on this page 3 here, sold to consumers?

A. Total gas manufactured.

Q. And do you mean the Astoria sells gas to consumers?

44309 A. Yes.

Q. Where is that, did you find out?

A. Why, they have some consumers in Long Island.

Q. Where, on Long Island?

A. Yes.

Q. They sold 201,903 cubic feet to consumers, you say?

A. Yes.

Q. At what price, did you find that out?

A. I don't recollect whether it was eighty cents or a dollar. Eighty cents, I think.

Q. Do your working papers show?

44310 A. No, I do not think they do, because it is taken from the account's receivable blotters, from the bills rendered to the consumers.

Mr. Ransom: That has been gone into many times.

Q. That sold to the United States Government, I think we had something about that once before. That is gas used by the Government?

A. Gas sold to the Government.

Q. You do not know what the Government did with it?

A. I do not.

Q. And the balance is sold to the Consolidated?

A. Yes.

Q. Now, we come down here to the salaries of general officers. Can you tell me what salaries those are, from your working papers—whose salaries you included?

A. I have not a copy of the general office pay roll in my working papers.

Q. You cannot tell what officers were included?

A. So I do not recall at this time what they do cover.

The Master: They cover all the items under 44312
that heading in the books?

The Witness: They cover all the items under that heading in the books.

Q. Can you tell me anything about legal expenses?

Mr. Goetz: I object to these questions. Mr. Chambers wants to get the details, when Mr. O'Brien has himself offered in evidence all the books and the vouchers which show the details. If there are any particular items that are attacked they ought to be called to our attention.

Mr. O'Brien: That statement is slightly in error, offered by Mr. Goetz.

The Master: He took the legal expense ac- 44313
count as he found it.

A. I cannot recollect what items were. The amounts shown here are the amounts which are shown under these respective headings in the books of the company. I have examined, or my staff have examined, all of the vouchers in connection with the accounts, but I do not personally recollect what the items are that are included under these respective headings. They are, however, the items shown under these respective headings in the books of the company.

Q. That is true of insurance, vacation and sickness, and all of that?

A. It is true of all the items appearing under "Miscellaneous."

Q. What is this "G. C. E. M. A. S."?

A. Gas Company's Employees' Mutual Aid Society.

Q. Do you know anything about those societies, any more than just that?

Mr. Ransom: I object to the question.

The Master: I will allow it.

Mr. Ransom: Exception. The bills are in

44315 evidence.

A. Nothing more than has been fully presented in this case.

The Master: Of the Astoria?

Mr. Ransom: The same is true.

The Master: I do not care anything about it.

Mr. Ransom: It is in evidence.

Q. Undistributed adjustments, that is a credit appears here on mine?

A. Yes.

Q. What undistributed adjustments do you have in mind?

44316 A. The items shown under that heading in the books of the company.

Q. Do you know what they are?

A. I think I can tell you what they are.

Q. All right, let us see what they are.

A. These amounts credited to undistributed adjustments in 1918 are practically all for charges made against the United States Government, gas defense, for the supervision factory, general and overhead expenses under the terms of Contract 1046, and ten per cent to cover supervision and overhead. Those two amount in 1918 to $190,591.65.

Q. You have got $190,122.55.

A. Yes, I found that there were one or two items in that account that belonged in duplicate gas charges account, instead of in the undistributed adjustments, and I have deducted them here.

The Master: What are those undistributed adjustments?

The Witness: The charges against the United States Government for supervision factory and general overhead expenses under the terms of Contract 1046 of the Government. They were all included and credited by the company to un- 44318
distributed adjustments.

Q. Why did not the Consolidated Gas Company get a little money for undistributed adjustments?

Mr. Ransom: It did.

Mr. Chambers: Probably it will.

A. I did not know that they had a contract with the Government for that.

Mr. Chambers: I just want to call the Master's attention to the fact that here is $190,000 charged, from the Government, because of that toluol operation.

The Witness: This is all credited back to the cost of the gas made by the Consolidated Company. 44319

Q. Well, the two plants should have obtained some undistributed adjustments?

Mr. Ransom: I object to the question. You are referring to toluol and the witness is referring to carbon contracts, which is a very different basis.

Mr. Chambers: After this gas case is over you will probably collect about a million from the Government.

Mr. Ransom: Not from the Attorney General.

Q. I can't understand how you picked out of that undistributed adjustment certain items which you say ought to have been in duplicate gas charges?

A. By an examination of the entries, debit and credit, in both of the accounts, undistributed adjustments, and duplicate gas charges, I found that an entry appearing in the journal, folio 189, which had been credited to duplicate gas charges, should have been credited to undistributed adjustments; and I found that vouchers 4260 and 4268, which had been charged to undistributed adjustments, should have
44321 been charged to duplicate gas charges. Therefore in making my computation here I made those corrections, transferring from one figure to the other.

Q. There was an error right there, wasn't there?

A. Why, certainly.

Q. I thought you said a minute ago there were no errors?

A. I beg your pardon, I don't think I said there were no errors.

Q. You said the books were right?

A. I still consider them right.

Q. Even though you found that error?

A. Yes, even though I found that error. The er-
44322 rors are immaterial.

Mr. Goetz: The amount was not affected.

Mr. Chambers: All right, I am glad to have the witness's statement on that.

The Witness: It does not affect the total anyway.

Q. Now, the duplicate gas charges, what duplicate gas charges are there, to whom, duplication to whom?

A. It includes the charges made in accordance with the requirements of the Public Service Commission.

Q. Whom did they charge twice, where was the duplication that you found?

A. I didn't find any one charged twice.

Q. Duplicate gas charges—"duplicate" means double gas charged, doesn't it?

A. That is the term applied by the Public Service Commission to be used in connection with the quantities of gas used by the company and set up in the books of account in accordance with their instructions.

Q. Can you tell me what it was for? Can you tell me anything more than that about it?

Mr. Goetz: I object to that, the uniform system of accounts shows plainly what it is. 44324

The Master: Objection overruled.

Mr. Goetz: Exception.

A. Under the Public Service Commission classification companies are required—

Q. I didn't ask you anything about the Public Service Commission. I am asking you if you can tell me in plain common everyday matter-of-fact English what it is, duplicate gas charges, what you found it to be, man to man?

The Master: What particular transaction was it that you included in duplicate gas charges?

The Witness: It represents the gas used by the company.

44325

The Master: The gas used by the company?

The Witness: Yes.

Q. How did you know that that is the only amount of gas, that they only used a certain amount, how did you find that out?

A. It is the amount reported by the engineers.

Q. In what kind of a report?

A. In the report manufacture, monthly.

Q. That is all you know about it, that they so reported?

A. That is what I relied upon.

Q. Now, defensive emergency service—

The Master: We know all about that.

Q. Did you find the same kind of defensive emergency service as found set forth in the records of the Consolidated Gas Company?

A. Expenditures for similar purposes.

Q. Guarding the plant during the war?

A. Expenditure for similar purposes. It includes all items shown in the books under that heading.

Q. Did you find that they kept right on guarding the plant after the armistice was signed?

44327 Mr. Ransom: We had to.

Mr. Chambers: You didn't have to at all. Why do you testify?

Mr. Ransom: The testimony is already in.

A. This includes items after November 11, 1918.

The Master: You had some in 1919, I think, too.

The Witness: It includes items after that date.

The Master: But on the next sheet in 1919 there are some?

The Witness: After December 31st.

Mr. Ransom: The Government controlled that.

The Master: What else, Mr. Chambers?

44328 Q. Renewals and replacements, that is simply an amount set up on the books?

A. Yes.

Q. Have you any idea what that is for?

A. It is an amount set up on the books at the rate of one-half cent per thousand cubic feet.

Q. For depreciation, isn't it?

A. I don't know what you mean by depreciation.

Q. All right, if you don't know.

The Master: Well, in 1918, was that the fact, or was that the actual expenditure for renewals and replacements?

A. This is the amount set up on the books of the company to provide for renewals and replacements of plant.

The Master: My recollection is that as to the Consolidated Gas Company your testimony as to 1918 was that it was the exact amount paid. Do you recall?

The Witness: The revenues and expenses statement which I made up on the Consolidated Company was for the actual repairs and replacements.

The Master: I wanted to make it clear—this 44330
is a setting up figure and does not represent the actual expenditure?

The Witness: That is an amount set up by the company.

Q. Now, the 48 inch main and the 60 inch main, Long Island City, was that to supply the consumers that you set forth above, sold to consumers, 261,900 cubic feet?

A. Shall I answer that question?

Q. Do you know?

A. I do not know. My common sense tells me that it was not.

Q. Do you know anything at all about that 48 inch 44331
and 60 inch main in Long Island City for which a charge is made of $61,730?

A. I only know what I have been told.

Q. Now, the Astoria Tunnel, do you know anything about the details of that charge except what you found on the books?

A. I know that is an amount charged to the Astoria Company for the Astoria Tunnel.

Q. And that is true of the Ravenswood Tunnel?

A. It is.

Q. You have a sum here of $1,201,853.08 for in-

44332 Arthur W. Teele, Cross

terest at seven per cent. That is the amount that is set up on the books, is it, just like that?

A. That is the sum of the amount set up on the books monthly.

Q. Well, then, one-twelfth of that $1,201,853.98 is set up on the books each month, is it, one-twelfth?

A. Yes.

Q. Do the books state that it is interest at seven per cent per annum on the average investment used in the manufacture of gas?

A. The bills rendered to the Consolidated Gas Com-
44333 pany for which the amount of interest is charged so states.

Q. You mean those are bills that come in monthly from the Consolidated Gas Company?

A. No, the bills that are rendered monthly by the Astoria Company to the Consolidated Gas Company.

The Master: To the Consolidated?

The Witness: Yes, they charge them for interest on the investment.

Q. You mean they charge the Astoria Company?

A. No, the Astoria charges the Consolidated.

Q. I mean the Astoria Company charges the Consolidated?

44334 A. Yes.

Q. Seven per cent on that sum, and send them a bill each month?

A. They charge the rate of seven per cent per annum on the amount of their investment in the gas business on the first of the month.

The Master: Have you the details of this $17,000,000 investment?

The Witness: This $17,000,000 figure which I see here is the total sum of the interest charges during the year capitalized at seven per cent. Now, I have a sheet which shows the amount

that is used monthly during 1918 by the Consolidated Gas Company in arriving at the monthly amounts upon which the interest calculation is made.

The Master: I was looking at another exhibit, and I did not get clearly some points that I wanted to get at. I was wondering whether your working sheets showed exactly how much was spent on plant A and plant B in construction, or the water gas plants.

The Witness: No. It shows the total amount of the accounts appearing on the trial balance 44336
of the Astoria Company on the first of each month, and any amounts which are deducted, and if you will recall, when I was on the stand in the Consolidated case I read into the record the amounts aggregating the total used for the month of August, 1918. I can give you the working sheets which I think shows the amount used each month.

The Master: Never mind.

Mr. Ransom: I think that is all in Sangster's analysis of the investment. Outside of working capital Mr. Sangster has on page 38 of his exhibit— 44337

The Master: But he does not show how much was expended on Plant A and how much was expended on Plant B. That is what I wanted to get at. You would not have that either, Mr. Teele, would you?

The Witness: No, I only have the totals.

Q. Well, you set up $1,201,853.98 for interest received from the Consolidated Gas Company for average investment.

The Master: He says he does, and he has capitalized it at seven per cent.

Q. You didn't make up this Exhibit 500, did you, or have anything to do with it?

The Master: That is that summary?

Mr. Chambers: Yes. It is $1,190,000 there.

A. I don't know what Exhibit 500 is. I have never seen it.

Q. It is less there, it is not the same amount?

Mr. Ransom: Remember, you are referring now to 1918.

Q. Now, for the water gas tar on page 2 of this same Exhibit 485, you have set up here a unit price
44339 of .06¼ a gallon. You have already told me that some of that water gas tar was sold, haven't you?

The Master: Question not allowed.

Mr. Chambers: Exception.

The Master: Ask a useful question.

Q. Why should there not be a credit for all that water gas tar, the whole 4,790,100 gallons?

A. There is a credit for it.

Q. For all of it?

A. For all of it.

Q. I don't see it, where is it? All I see is a credit for 451,761 gallons.

The Master: I thought you were looking at
44340 the second sheet.

Mr. Chambers: I am.

A. I cannot interpret the statement for you.

Q. There is only a credit for the part in red there, isn't there, as I look at it?

The Master: Question not allowed. It is so apparent on its face that there is no use spending time here.

Mr. Ransom: The part in red was what was used for coal gas enrichment.

Q. You say you don't know whether any part of that 4,790,100 gallons was sold to outsiders?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. And if any of it was sold at what price it was sold?

Mr. Ransom: Objected to as fully covered.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Drip oil, was any of that sold to outsiders?

The Master: You can answer that, Mr. Teele.

A. Yes, I believe some part of it was sold.

Q. How many gallons?

The Master: It looks to me like 510,000. 44342

Q. That is drip oil—we don't know whether it was sold or not.

The Master: If it was used in their works it would be shown in red, wouldn't it, Mr. Teele?

The Witness: No. This is the residuals which are credited against the manufacturing cost. That item is shown in red because we show first the total gallons of water gas tar received, and part of it is attributed to coal gas and part of it is attributed to water gas.

The Master: I understood that.

The Witness: There was recovered 510,911 gallons of drip oil. 44343

The Master: The question is how much of that was actually sold.

Q. And at what price per gallon?

A. The total sales were the quantity shown, 510,911 gallons, and the average price realized was 11.781 cents per gallon.

Q. Why didn't you use that instead of .098?

A. I assume it is because there are some handling charges in connection with it.

Q. You assumed that, did you?

44344 Arthur W. Teel—Cross.

A. Without being able to state to you exactly that that is the case, my knowledge of the cost of handling materials, etc., makes me reach that conclusion.

Q. So you just sat down and took off a little, what you thought—

A. I did not. That is the amount which the company has used in crediting its drip oil to its manufacturing operations.

The Master: Where is there a credit for the actual money realized from the sale of residuals?

44345 The Witness: All the residuals go into stock accounts, residual stock accounts, and the sales from these stock accounts are credited, of course, to the stock accounts.

The Master: Do these statements then give credit for the actual moneys received?

The Witness: There are some charges against the sales account during the year which affect the average price for the year. The price I gave you was what was realized from the actual sales. There are some charges amounting to $3,500 and odd, which are charged into the residuals on hand accounts which affect the average price realized.

44346 The Master: Does that bring it down to the .098?

The Witness: Yes.

Mr. O'Brien: Why did you put that figure in there net?

The Master: Because that is the way they keep their accounts over there. They run a residual account and credit the account with the amount received, and charge it with the amount of oil, and handling.

Mr. O'Brien: Why are not these deductions which the witness speaks about, which he says

he has made from the sum total of these sales at eleven cents, why are not those deductions made in some of the other expenses that are set forth here?

The Witness: Because they only affect the drip oil account.

Mr. Ransom: The uniform system of accounts requires the amount realized less the expense of handling.

The Master: Why wouldn't it have been better, Mr. Teele, to have shown in this account the exact amount received from residuals, charging it with the handling item, which would bring it down to the .098, instead of showing it as you do? 44348

The Witness: Because we are dealing with the net amount realized.

The Master: All these figures are net amount realized? Take iron mass for instance.

The Witness: Iron mass is a material which is used in manufacturing.

The Master: Oh, I see.

The Witness: We are dealing here only with residuals, and therefore, I am dealing with the net amount realized. I don't think anything is gained by showing the gross amount and then taking the expenses and adjustments and corrections that have to be made from time to time. 44349

Mr. O'Brien: You mean to the Gas Company in this case?

The Witness: I don't think anything is gained to anybody.

Q. You don't show at all any item of expense for handling the drip oil separately, do you?

The Master: Not on this statement, he has said so.

A. Not on this statement.

Q. Did you examine that expense for handling drip oil?

A. There isn't any expense in connection with this drip oil, no special expense in connection with it.

Q. Then I was right that it should be eleven cents?

A. You are not right, and I made the explanation of why you are not right.

Q. How much did it cost to handle, as shown by the books, to handle that particular drip oil? You found that they sold 510,911 gallons of drip oil at
44351 eleven and odd cents a gallon, which would be so much money, wouldn't it, Mr. Teele? Can you answer my question?

A. I will answer it when I have informed myself in regard to it.

Q. Well, that does not require any looking up, this question?

A. The total credit in that account for drip oil for the year was $53,650.40. There were charges against it of $3,504.44, making net $50,145.96. The total amount of drip oil recovered was 510,911 gallons, which divided into the $50,145.96 gives .098.

Q. What was the $3,504.44 for?

44352 A. The $3,504.44 which was charged against that was made up of two items, one appearing in journal folio 86, June, 1918, $2,282.90, being adjustment of the estimated value of drip oil on hand as of June 30, 1918; and one appearing on folio 200 of the journal in December, 1918, amounting to $1,221.54 that being an adjustment of the estimated value of drip oil on hand as of November 30, 1918. The two aggregate $3,504.44.

Q. So that there is nothing in there for handling it at all?

A. There is nothing in there for handling drip oil.

Q. It is just those two adjustments?

A. Just those two adjustments.

Q. Do you know anything about what those adjustments are for?

A. No more than what they state and what I have read. They adjust the two inventories.

Q. That means that when they made the adjustment they did not have quite so much oil on hand as they thought they had?

A. Yes, I imagine so. 44354

Q. So that we get back to the point that there was no charge in there for handling of any kind?

A. No, there is no charge for handling drip oil, because there isn't any expense of that kind at the Astoria plant.

Q. Now, whatever you said about Exhibit 485 for 1918, does it apply to Exhibit 486, the eight months ending August 31st, 1919?

A. Yes.

The Master: Didn't you hear me ask him that an hour ago, Mr. Chambers?

Mr. Chambers: No, I didn't. I think you asked him when I was busy with something else. 44355 Did you ask him that very question?

The Master: Yes, and several more to make it perfectly sure that there was no mistake about it.

Mr. Chambers: Let me tell you the trouble with your questions. You asked him long before I had brought out certain matters. That question ought to be asked after I had covered 1918, because it might relate only to the things brought out up to that time. Now, I ask him if all that he has said up to now applies.

44350 Arthur W. Teele, Cross.

The Master: He has answered it.

Q. I will ask about this credit for water gas tar. You have dropped that down to .049 a gallon on page 1 of Exhibit 486. Did they sell any of that tar?

A. I don't understand your question.

Q. Do you see that red line, 459,193 gallons?

A. On the first sheet or the second sheet?

Q. Credited to water gas, less credit for water gas tar.

The Master: That is the enriching oil, on Exhibit 486.

44357 Q. It is page 1 of Exhibit 486.

A. That is the coal gas sheet, and I see the amount to which you refer.

Q. Credited for water gas tar, Astoria W. G. Plant, 459,193 gallons at .049. Was any of that 459,193 gallons sold to outsiders?

A. I don't see the figure that you mention.

The Master: You are looking at 1918, and not 1919.

A. You have gone to 1919?

Q. Yes.

The Master: What was the sale price that year?

44358 The Witness: Is the water gas working sheet here, Mr. Littlejohn? I can answer the question as to whether that is any part of the gas tar that was sold.

The Master: The question was whether there was some gas tar sold?

The Witness: Yes, there was some.

Q. I want to ask how much it brought per gallon?

A. I don't know.

The Master: Telephone down for your working papers on that.

The Witness: I don't know whether an analysis was made on it for 1919.

The Master: Then say so.

The Witness: I have not the working papers from which I can furnish you that information.

Mr. Ransom: The details were put in evidence by Mr. O'Brien.

Mr. Chambers: What is that? The details were put in evidence by Mr. O'Brien?

Mr. Ransom: Yes.

Mr. Chambers: The details of this? 44360

Mr. Ransom: Yes.

The Master: Don't let us get into that. If it is in it is in.

Mr. O'Brien: Will your Honor please strike Mr. Ransom's statement from the record?

The Master: That is his statement. If he is wrong I will find it. Mr. Teele, as I understand it, you haven't got the analysis of the 1919 water gas tar account?

The Witness: No, sir.

The Master: Showing the sales?

The Witness: No, sir.

The Master: So you can't give Mr. Chambers 44361 the average price of sales the same as for 1918?

The Witness: No.

The Master: Is the same true of drip oil?

The Witness: The same is true of drip oil.

The Master: You didn't make an analysis of that?

The Witness: I haven't a complete analysis of it.

The Master: So you cannot tell the actual sales?

The Witness: I can tell the total sales in dol-

44362 Arthur W. Teele, Cross.

lars and the total sales in gallons, but I can't give you the individual sales.

The Master: Or the average price?

The Witness: Nor the average price. The average price was—yes, the average price will be the amount realized for water gas tar.

Q. You have a new item here in your general miscellaneous expense for 1919 that does not appear in 1918, you call it "Superannuation." Was that something new that started in 1919?

A. That is the amount that appears upon the books

44363 in 1919.

Q. There wasn't any such account in 1918?

A. I didn't find any such account in 1918.

Q. What is that for, do you know?

A. Why, it is in the nature of pension payments.

Q. You don't know to whom do you?

A. No, I can't tell you now. The books and records show.

Q. Are the renewals and replacements for the eight months ending August 31, 1918, actual—

A. The same as in 1918.

The Master: Estimated?

Q. It is an estimated and set-up book account?

44364 A. It is an arbitrary rate that is included.

Q. What taxes for 1918 and 1919 have you included in the item for taxes, what kind of taxes? Take 1918 first. I didn't ask you about that. You have a little over half a million set up for taxes?

A. The taxes for 1918 are the actual taxes. The taxes for 1919 are the company's estimate for the eight months.

Q. I want to know what taxes in 1918, the different classes, and the amounts, if you can give them to me?

A. It includes in 1918, special franchise tax $321.73, personal tax, $11,157.41.

Q. Do you know what that personal tax is for?

The Master: I am not going to allow any more of this, I am going to let him finish the answer. The defendants have put in evidence all the accounts of the Astoria Light, Heat & Power Company. They have also offered in evidence a detailed statement by Mr. Sangster analyzing these accounts, and you ought to know how that is made up, and you ought to know what you are going to criticize and attack. Let him finish 44366
the answer.

Mr. Ransom: Sangster has given every detail of these taxes for 1918 and 1919.

The Master: Go on and finish your answer.

The Witness: In order to bring them all together I will state them over again.

Special franchise, $321.73.

The Master: The Master states that that appears on the Sangster exhibit in 1918, page 33.

The Witness: Personal tax, $11,157.41.

The Master: The Master states that that appears on the Sangster exhibit.

The Witness: Capital stock tax, $8,541.50. 44367

The Master: The Master states that that item appears on the Sangster exhibit.

The Witness: Real estate, $345,953.30.

The Master: The Master states that that item appears on the Sangster exhibit.

The Witness: Excess dividends tax, $6,000.

The Master: The Master states that that item appears on the Sangster exhibit.

The Witness: Gross earnings tax, $31,516.10.

The Master: The Master states that that item appears on the Sangster exhibit.

The Witness: Federal income tax, $192,594.01.

The Master: The Master states that that appears on the Sangster exhibit. What is the use of wasting time that way.

Mr. Chambers: These Federal income and excess dividends all come out.

The Master: You have that in the record. You put them in yourself, or your associate did.

Mr. Chambers: Well, I haven't a copy of that handy.

The Master: That is the trouble, you are not
44369 prepared for your cross-examination.

Mr. Chambers: I will have to concede that you have not given me time enough to prepare. I haven't had any time at all to prepare for this cross-examination, a good deal of it. You have stated what is quite correct.

The Master: I could have prepared myself for cross-examination, having the Sangster exhibit before me, in one hour.

Mr. Chambers: I have worked every night until practically midnight, every night for a long time. I was working on this case last night, another phase of it.

44370 The Master: In one hour, with the Sangster exhibit before me, I would have known what items in Mr. Teele's exhibit I wanted to criticise and attack.

Mr. Chambers: Do you know of any way in which a man can work on two or three things at once? There are only so many hours in the day.

The Master: There was an entire hour wasted yesterday, as I am informed, from three to four, when you had nothing to do, and you could have done this.

Mr. Chambers: Where did you get any such statement? Ransom made some foolish remark here--

Mr. Ransom: You said you adjourned at three.

Mr. Chambers: Ransom, you can't state a thing correctly to save your life. I said Colonel Dykman left here at three o'clock. The engineers were busy in conference in here while I conferred with some of the Brooklyn Union Company practically the entire hour. One of those with whom I conferred was Mr. Jourdan, 44372
while the engineers were conferring in another room.

The Master: Put down on the record the statement that I refuse to permit any further speeches, and I refuse to let Mr. O'Brien make one.

Mr. O'Brien: Mr. O'Brien desires to make comment on the statement made by the Master.

The Master: No, the stenographer will not take any more.

Mr. O'Brien: Mr. O'Brien takes exception to the Court's ruling denying him that right.

The Master: Your exception will be noted. 44373

Mr. Chambers: I except to the general ruling.

Q. If those taxes for 1919 have not been paid why did you include any interest on them? You said they were not actually taxes paid but were estimated amounts.

A. Because the estimate which the company makes covers both taxes and interest for the year.

The Master: Apparently in 1918 there wasn't any interest paid.

The Witness: In 1918 there wasn't any.

They adjust at the end of the year their estimate to the actual amount of taxes paid.

The Master: If for 1919 their estimate including interest exceeds the amount actually paid, it is readjusted?

The Witness: It is readjusted at the end of the year?

The Master: The mere fact that they make an estimate covering things does not mean that they will pay interest?

The Witness: It does not?

44375 Mr. Ransom: Sangster's exhibit, page 33, shows the actual taxes.

Q. Did you find that the franchise taxes had been paid for 1918, actually paid, or were they taxes in litigation?

Mr. O'Brien: I want to call attention to the fact that when that question was asked I saw two faces nod to the witness.

The Master: I sustain the objection.

The Witness: The witness did not see any faces nod.

The Master: The objection is sustained upon the ground that the Sangster exhibit shows it.

44376 Mr. Chambers: There was no objection.

The Master: All right. I have sustained it.

The Witness: As a matter of fact the taxes were actually paid. There is a Voucher No. 2336 which was paid May 16th, 1918, by check No. 38287, as registered in cash book 105, folio 175.

The Master: It is just another illustration of the uselessness of this examination, when you have had the books for months, and experts have

44377

analyzed them and criticised them and subjected them to the microscope.

Mr. Chambers: I object to that. That is not quite the fact.

Mr. O'Brien: I also take exception to that comment.

The Master: Anything else with Mr. Teele?

Mr. Chambers: Whatever we have done we have had to do in a hurry, too much of a hurry.

The Master: Mr. Sangster's report does not show any hurry, it shows great care, and as I probably said before, a good deal of intelligence.

Mr. Chambers: I think that is all. 44378

The Master: Mr. O'Brien, have you anything that is not already covered?

Mr. O'Brien: I can hear it coming now, Humphrey's Specifics again—this detail is already covered, and the next one is not proper cross.

Mr. Chambers: I want to note that I suspend for lack of time, further cross-examination.

The Master: Mr. O'Brien, sit down. Mr. Chambers, I will give you all the time you want. Ask any questions you want to of Mr. Teele.

Mr. Chambers: I will have to take time out of court to look it up fully.

The Master: Have you any other questions 44379
to ask of Mr. Teele?

Mr. Chambers: Well, I cannot say, because I would have to go and study up.

The Master: Have you any other questions to ask of Mr. Teele? Now, you will answer that question.

Mr. Chambers: Not right here ready, no.

The Master: Go on, Mr. O'Brien.

Mr. Chambers: Not any stereotyped ones, or memoranda made. I would like to examine him further if I had more time.

By Mr. O'Brien:

Q. Mr. Teele, when did your men complete this examination of the books of the Astoria Company?

A. A few days ago, at the time when these were turned over to Judge Ransom.

Q. When did they begin that examination?

A. A part of the examination of the Astoria accounts was commenced in January, 1918.

Q. How far did it extend?

A. Why, a considerable amount of the work was done at that time commencing in January and con-
44381 tinuing until the work of 1918 was carried up to certain points. The work was subsequently completed in 1919 when I was asked to prepare these two statements.

Q. Are we to understand from that that prior to your first testifying on the stand your men had gone into the Astoria books and prepared such a statement as this covering the year 1918, Exhibit 486?

A. I didn't say so; I didn't do anything of that kind.

Q. I am asking you?

A. No. We had made an examination of the Astoria books, as I have already testified—

44382 Q. I am not going to take up very much time, and if you will help me I will get through here in a few minutes?

A. I will try to.

Q. When you first went on the stand and your exhibits were first offered, drawn up in similar form to Exhibits 485 and 486—

A. Which exhibits are you referring to now?

The Master: The Consolidated Company exhibits for 1918.

Q. You set down a certain price for the gas paid to the Astoria Company by the Consolidated Gas

Company. Now, will you kindly say how far the examination of your men went up to that time into the Astoria Company's books?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it. I don't know what the point is.

Mr. Ransom: That was gone into when he was on the stand.

Mr. O'Brien: Now, I don't want Ransom to testify—

The Master: Please stop it.

Mr. O'Brien: When I ask a question he tries 44384
to give the witness the answer in his argument.

The Master: In your exhibits affecting the Consolidated Gas Company for 1918, and part of 1919, you showed amounts paid to the Astoria Company which included overhead, taxes and other things. At that time how far had your examination gone of the Astoria books?

The Witness: Why, we had practically completed our examination of the Astoria books for 1918.

Q. And as to 1919?

A. Not as to 1919, but for 1918 the major part of the work had been completed. That was done— 44385
we started work practically on all companies at the same time. A large proportion of the work on the Astoria Company was completed originally in 1918.

Q. So before you went on the stand to testify in this case you could have, if you were so advised, given us this set up, Exhibit 486?

A. If I had made it up at that time. I did not make up this exhibit or make up this statement until quite recently.

The Master: Mr. O'Brien's question is, if you had been asked to make up a statement for As-

toria for 1918 at the same time that you made up the 1919 statement for the Consolidated, you could have done it?

The Witness: I could have done it.

The Master: You were practically in shape to do it?

The Witness: I could have done it with some additional work.

Q. It would not have taken longer than a few days, would it?

A. I don't know right now.

44387 Q. You could take your totals, couldn't you, and using the total amount of gas made carry out—

A. Yes, after the books were closed for 1918 I could have made up such a statement as this without much trouble.

Q. Now, you have referred to your working papers. Will you state how far you went in your examination into these accounts, in general terms, using the Sangster exhibit as a basis for comparison?

A. I have never seen the Sangster exhibit except as it has been on the table here.

Q. Well, you don't mean to say your men didn't see it?

44388 A. I don't think a man on my staff has seen it. If he has seen it it is without my knowledge.

Q. Will you ask Mr. Littlejohn if he saw it and went into it?

A. You may ask him.

The Master: Mr. Littlejohn, did you see the Sangster exhibit?

Mr. Littlejohn: I saw it, yes.

The Master: Where did you see it?

Mr. Littlejohn: At the Consolidated Gas Company's office.

The Master: There is your information, Mr. O'Brien.

Mr. O'Brien: Just after it was offered in evidence.

Mr. Littlejohn: I don't remember that date.

Mr. O'Brien: I don't want the minute. I am not calling for a stop watch. When did you see it, approximately?

The Master: This is rather an informal way of getting information.

The Witness: He is not under oath.

Mr. Littlejohn: Time has been passing so 44390
quickly that I would hate to state the exact date, but it was several weeks ago.

The Master: This is informal, but I will allow it.

The Witness: It was not used, Mr. O'Brien, in connection with making up this statement, if that is what you want.

Q. You called attention to the fact that Mr. Littlejohn was not under oath. Would it make any difference in his statement, do you think?

A. Not the slightest.

Q. You have seen it today, however? Would you say that you had covered the same ground, practically, 44391
that your working papers set up the same matter as Mr. Sangster?

Mr. Ransom: I object to that as immaterial and incompetent.

The Master: Objection sustained.

Mr. O'Brien: Maybe your Honor will change your mind after the witness has seen the paper.

The Master: No, I won't let him look at it.

Mr. O'Brien: Can't you see, your Honor has

permitted Judge Ransom all through the examination by Mr. Chambers to intersperse this record with references to the Sangster exhibit, the inference being, or the innuendo being that Mr. Teele's figures are the same as Mr. Sangster's, that Sangster has put in the figures that Teele has in his working papers, and all I have asked of this witness, and it is a perfectly proper question, if how far he went, whether his working papers set up the same detail as is set up in the Sangster exhibit.

44393 The Master: The objection is sustained.

Mr. O'Brien: I take an exception.

The Witness: Your Honor, I would like to correct what I just said about my never having seen the Sangster report. I believe I did look at it when it was presented in court, but since that time I haven't seen it and made no examination of it whatever, and I don't know what it is.

Q. You didn't make any comparisons between that and any of your working papers?

A. None whatever.

Q. How were you able to say with the Master, then and with Judge Ransom a few minutes ago, that your

44394 figures on taxes were the same as the Sangster figures?

The Master: The objection is sustained, and the Master says on the record that the witness said no such thing. Judge Ransom called my attention to the exhibit, and I checked up the figures as Mr. Teele read them off from his statement, and his figures agreed with those of Mr. Sangster. It was for that reason that I made the ruling that I did when Mr. Chambers was interrogating him, and made the statement that

apparently Mr. Sangster had all the information that could possibly be gleaned by these questions.

Q. Did your men go over the Sangster exhibit and submit memoranda to Mr Ransom for his examination of Mr. Sangster?

A. I don't know whether they assisted in the checking of the Sangster schedules or not. That is, I do not now recall. We did assist in the checking of some schedules, but whether my men assisted in the checking the Sangster schedule or not I don't now recall.

The Master: And the Master rules that it is 44396
entirely immaterial whether they did or not, and will not permit any further questions on that line.

Mr. O'Brien: Exception to the Master's ruling.

Q. Will you refresh your memory by looking at your working papers and tell us to what extent your men went over the Sangster exhibit and submitted memoranda to counsel for the complainant?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. When did you begin your work on the 1919 account of the Astoria Company?

A. I should say since the first of January; I don't 44397
know the exact date.

Q. How many men did you have on it?

A. I think I have had five or six men working.

Q. Senior accountants?

A. Mr. Littlejohn is the senior accountant, and I think there have been four or five assistants.

Q. When you presented your schedules for the Consolidated Gas Company brought down to October 31, 1919, your men had not gone into the 1919 accounts of the Astoria Company?

A. They had not.

Q. In the schedules purporting to show the cost of water gas and coal gas brought down to October 31, 1919, you took the price as set forth for the gas sold to the Consolidated Company for 1919, from a voucher?

A. Or from the statements filed in the accounting office of the Consolidated Gas Company.

Q. What statements do you refer to?

A. The monthly statements that are rendered to the Consolidated Gas Company by the Astoria Company.

Q. On what subject?

44399 A. On the cost of gas, that is, the basis of the monthly billings.

Q. Is it an exhibit in this case, any example of what you have in mind?

A. Well, I think I read from it when I was on the stand.

The Master: Do you know all the exhibits in this case?

The Witness: No.

The Master: How can you answer this question?

The Witness: Only that I referred to it when I was on the stand in the Consolidated case.

44400 Q. Did you refer to the monthly manufacturing report?

A. I referred to the statement which is submitted with the bill by the Astoria Company to the Consolidated Company every month showing how they arrive at the price at which they bill the Consolidated Company.

Q. Have you such a statement here?

A. No.

Q. Was any statement of that kind ever produced in court here during your examination or any examination so far as you know?

Mr. Ransom: I object to that as incompetent, apparently they were offered in evidence by Mr. O'Brien.

The Master: Objection sustained, not on the ground that they were apparently offered in evidence by Mr. O'Brien.

A. I think I read it into the record in the Consolidated case.

Q. Has your counsel got here a copy of the paper that you have in mind when you used the words "monthly statement"?

A. I don't think I have one here, no. 44402

Q. Has counsel for the complainant a copy of such a statement?

The Master: Counsel need not reply.

Mr. O'Brien: Exception.

Q. In your examination by Mr. Chambers, Mr. Teele, and also in answer to the question put to you by the Master, you have stated that these computations that you have set forth on Exhibits 485 and 486 are taken from the books of the company—

A. (Interrupting.) I beg your pardon, I did not

Q. Well, perhaps you do not recall it, but it is so on the record, in answer to the Master's question.

A. I did not say the computations were taken from 44403 the books of the company.

Q. The figures for the computations are taken from the books of the company.

A. Yes, books and records.

Q. Well, now, you are bringing in the word "record" and that is just what I want to know, I was going to ask you about that.

A. Yes, books and records.

Q. The books of the company now—

The Master (interrupting): No, not the books of the company now. The witness said books of the company, that was particularly referred to, and he was interrogated about manufacturing books and reports.

Q. What I want you to give me, is just a statement as to the books that you have used for the purpose of making such calculations as you did on Exhibits 485 and 486.

Mr. Ransom: Objected to as fully gone into.

The Master: Objection sustained.

44405 Mr. Ransom: Fully gone into by Mr. Chambers.

The Master: On that ground.

Mr. O'Brien: It has not been gone into.

The Master: I so rule.

Mr. O'Brien: I take an exception.

Q. When you used the word "books," in answer to the Master's question on that this morning, did you mean the general books of account, such as were offered in evidence?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: I cannot conceive of counsel

44406 objecting to that question.

The Master: Well, I can; I heard him.

Mr. O'Brien: Unless he simply wants to keep the doors closed to a fair inquiry in this case.

The Master: The ruling stands.

Mr. O'Brien: Exception.

Q. When you say that they were made from books and records, state in details what those records were.

The Master: That same question has been ruled out, and it is ruled out again.

Mr. O'Brien: Exception.

Q. Were there any other papers, records, books of account used by your men in their inquiry into the figures of the Astoria company for the purpose of making up these Exhibits 485 and 486, then what you have mentioned in your examination this morning?

The Master: Same ruling.

Mr. O'Brien: Well, your Honor, I urge you to permit that question, it will close that matter up. It is a question that I have to ask him, and it is not definite on the record.

The Master: The matter is closed up.

Mr. O'Brien: Exception. 44408

Q. Did your men make an audit of the Astoria company for the eight months of 1919, or the year 1918?

Mr. Ransom: Objected to as calling for a conclusion, fully covered.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Mr. Teele, will you give me the figures making up the total of repairs labor and repairs material set forth on Exhibit 486.

The Master: The question is not allowed, upon the ground that Mr. O'Brien's witness, Mr. Sangster, had full access to those books, and has these figures, or should have them. 44409

Mr. O'Brien: I want the separate amounts, your Honor, for those figures.

The Master: You have them, Mr. Sangster will give them to you.

Mr. O'Brien: Does your Honor insist that I cannot find out how he arrived at these figures that are in this exhibit?

The Master: You have heard my ruling.

Mr. O'Brien: Exception.

44410 Arthur W. Teele, Cross

Q. Have you got in your working papers, and if so, state what they are, your figures for repairs labor and repairs material, for each one of the coal gas sets?

The Master: Same ruling. I am not going to take the time to have Mr. Teele sit here and give Mr. O'Brien long strings of figures that Mr. O'Brien has had at his disposal for months, and that his expert, Mr. Sangster, has analyzed and criticised, if he did not offer in evidence.

Mr. O'Brien: Exception.

Q. In connection with the items set forth on Ex-
44411 hibit 480 and Exhibit 485, for the rentals of jointly used facilities, the 48-inch Harlem main, and the other mains, the Ravenswood tunnel and Astoria tunnel, how far did your men examine into the books of the East River Gas Company and the New Amsterdam Gas Company?

A. In connection with these accounts?

Q. Yes.

A. We examined the bills rendered by the company.

The Master: No. Did you examine the books of the East River company?

The Witness: We did not examine the books
44412 of the East River Company, no, in connection with these accounts.

Q. Did you examine the books of the New Amsterdam?

A. No, not in connection with these accounts.

The Master: You have examined the books of both these companies, I heard you say.

The Witness: Yes, but not in connection with this.

The Master: But you have examined them to the same extent you have the Consolidated Company books, I suppose?

The Witness: Yes.

The Master: And the Astoria Company books?

The Witness: Note quite as fully, because my examination on those accounts is not yet completed.

Q. Well, in connection with this?

The Master: Now, just one moment. In connection with the question and the ruling I made a few minutes ago about repairs labor and repairs material as applicable to the various plants, I want it noted on the record that page 25 of Mr. Sangster's exhibit has a table showing repairs to 44414
apparatus, Plant A, Plant B, Plants A and B, Plant C, and the total as to thousand cubic feet for 1918, and the same for 1919; repairs to buildings, repairs to tools and implements; indicating that he very fully and thoroughly analyzed these accounts.

Mr. O'Brien: I have my purposes in asking that question, your Honor, and what comment you make does not help the argument at all.

The Master: All right, next question.

Mr. O'Brien: I have got every right in the world to find out how far they went with their 44415
examination. Your Honor hasn't any right to anticipate that I may have this or that or some other purpose in mind when I am asking the question. Right on the face of it, I have certainly got a right to find out how far these men went with their examination of these accounts, and whether Teele's men have not just taken the Sangster figures and made up this exhibit, and I want to find how far we can rely upon their statements. I want to find out in addition to that,

whether they went further than Mr. Sangster did. There was no pretense made by the defendants in presenting their witness, Sangster, and bringing forward his examination of the books that he referred to, to represent that they went any further than they did. He stated on the stand how far his examination went, and that it was not an audit, he made no attempt to go into underlying data to determine the reliability of the figures in the general books of account of the Astoria Light, Heat & Power Company. Now,
44416 I have that right to find out whether this witness has gone any further than Mr. Sangster, has delved down into the underlying data of the Astoria Light, Heat & Power Company entirely and in detail, or even in part to make tests of underlying detail in order to satisfy himself and satisfy us as to the reliability of the figures in the general books of account.

Q. I ask you now, Mr. Teele, whether you made any tests of underlying data of the Astoria Light, Heat & Power Company, such as reports made of coal, the weighing of coal, gas makers' daily reports, foreman of gas makers' reports as to coal and oil used
44418 during each day; the bills of lading and the reports made by various subordinates to the superintendents of the works for the purpose of determining the reliability of the general books of account or reports made of manufacture?

The Master: The witness will answer that question.

A. I made such an examination of the underlying data pertaining to the entries carried into the operating ledger as I deemed necessary to satisfy myself as to the accuracy of the records.

Q. Now, with respect to that, with what papers was that test or examination made? Did you take underlying data for a particular month or a particular week, and if so, state what it was?

Mr. Ransom: I object to that question.

The Master: No, I will allow it.

Mr. Ransom: I call your Honor's attention to the fact that these books and records about which the witness is being interrogated are defendants' exhibits, not complainant's exhibits. We put these in only as summaries of documents which the defendants put in evidence, not ourselves. 44420

Mr. O'Brien: They were not rebuttal, your Honor; they did not rebut anything in the Sangster exhibit.

The Master: I think it may be useful to have Mr. Teele state just how far he went in checking up these books of account, or his men.

The Witness: We examined all of the vouchers for 1918; we examined all of the pay rolls for 1918 and compared the pay roll totals with the distribution of pay rolls. We examined and made up independent summaries and checked against the summaries in the books the charges in the Accounts Receivable blotters. 44421

Q. Just a minute.

A. No, let me finish, please.

The Master: Let him finish. No interruption.

Q. What was that last statement?

The Master: No, wait a minute, now. This answer is going to be complete.

Mr. O'Brien: But you permitted Ransom frequently to interrupt our witnesses.

The Master: I won't permit it now, and that ends it.

Mr. O'Brien: I take an exception to your Honor's ruling.

The Witness (continuing): We examined all reports underlying the journal entries, and which are necessary to the statement of the journal entries. We examined the manufacturing reports and checked them against the intermediate papers known as production statistics, upon which are founded the journal entries distributing manufacturing material, and of course we checked all postings forward to the general ledger and various
44423 postings forward to the operating ledger. We also examined various underlying data necessary to an understanding of the entires made.

The Master: Well, what check, if any, did you make for material, coal and oil?

Mr. O'Brien: Your Honor, you are going to break up my examination.

The Master: No, but he has not answered something that you asked.

Mr. O'Brien: I want to take up each detail here and this is too important to be gone over, slurred over by one question and answer.

The Master: I will allow—I will let you ask it. Now, what did you do about coal and oil?
44424

The Witness: We examined all of the invoices for 1918, and with respect to the oil invoices, we listed all of the oil invoices and checked the consumption reported by the manufacturing department by taking the inventory at the beginning of the year, as reported by the superintendents, adding thereto the purchases of oil and deducting therefrom the inventory as reported at the end of the year. We compared and listed the reports of quantities of oil received, shown

by the receipt vouchers attached to the original bills, with the invoiced quantities of oil.

Q. What discrepancies did you find—

The Master (interrupting): One minute.

Mr. Ransom: Let him finish his answer.

Q. Are you through, Mr. Teele?

A. So far as oil is concerned.

The Master: Wait a minute.

Mr. O'Brien: I do not see why he should be treated so tenderly, and with such solicitude by the Master.

The Master: How about coal? 44426

The Witness: The coal, we took the inventories at the beginning of the year, and added the invoiced quantities and deducted the inventory at the end of the year for verification of the coal consumed. All coal is not weighed into the Astoria plant, so that we could not make a comparison of the reported weights received against the invoiced weights, but the oil is all measured, and we made a comparison of the quantities.

The Master: Now, Mr. O'Brien.

Q. Now, first as to this oil, when you spoke about oil used, did you take the reports or a summary and addition of the amount of oil reported to be used in 44427
the gas makers reports and use that in these examinations that you say were made by your men?

A. We did not take any reports made by the gas makers reports; we took the monthly reports of manufacture made by the superintendents of the works.

Q. Where did you get them?

A. In the office of the Astoria Company.

Q. In 15th Street and Irving Place?

A. Yes, the same ones that you have put in evidence.

Q. Just a minute. Were they office copies of the originals, or the originals themselves?

A. They were copies marked Plaintiff's Exhibits for identification.

Mr. Ransom: Defendants'?

The Witness: Defendants' Exhibits, for identification.

Q. Then, you did not use them until they were offered in evidence?

The Master: He said they were marked for identification at the time.

44429 Q. You have used them for these verifications since they were offered in evidence, or for identification?

Mr. Ransom: Objected to.

The Witness: I have used them in making up these statements, yes.

Q. You did not use them before that time?

A. Yes, I think that we had access to them before that time.

Q. Well, why did you refer to them as the Defendants' Exhibits for identification?

Mr. Ransom: I object to the question.

A. So as to identify them in your mind.

Q. You said that in some instances you went into
44430 underlying data, in this long answer that you gave while the Master was at the telephone. What underlying data did you go into, and for what month or what week, during the year 1919, up to August 31st, and 1918?

A. Well, I had in mind particularly when I said that, the formula by which the computations are made as to the quantity of gas oil used for enrichment purposes, which is not a report but just a formula used in the accounting office in determining the quantity.

Q. You did not have in mind anything else but that?

A. That is the only thing which I had in mind when I made that statement.

Q. And only that?

A. That is the only one that occurred to me at that time.

Q. Well, I asked you in your answer—

A. (Interrupting.) That is the only one which now occurs to me.

Q. Yes. How far beyond the accounts payable, or I suppose what we call the sundry creditors' ledger—

A. (Interrupting.) I don't know what you are referring to. There is a sundry creditors' ledger, and 44432
there is a voucher record, and there are accounts payable vouchers.

Q. How far did you go beyond accounts payable vouchers?

A. I don't know what you mean by going beyond them.

Mr. O'Brien: Well, perhaps I will have to have the answer read then, with the Master's permission. Go back and read the answer made by Mr. Teele.

The Master: No, I won't allow it.

Mr. O'Brien: Well, it is a long answer, and I 44433
have got to have it for the purpose of my examination of this witness.

The Master: I won't allow it. That is all.

Mr. O'Brien: Will your Honor state why you will not allow the stenographer to read an answer to a question which was given while you were at the telephone?

The Master: The record will speak for itself.

Mr. O'Brien: Well, I want it for the purposes of asking further questions of this witness—

The Master: Well, the record will speak for itself.

Mr. O'Brien: And I take an exception to your Honor's ruling.

Q. Mr. Teele, when in answer to my question as to how far you went into an examination of the accounts of the company, you referred to accounts payable, will you state what you said?

The Master: I will not permit the witness to repeat what he said.

Mr. O'Brien: Exception.

44435 Q. How far did you go into accounts payable with your examination?

A. I do not know what you mean by your question.

Q. Will you state what underlying data supporting the entries in the sundry creditors' ledgers and the sundry debtors' ledgers you examined of the Astoria Company for 1918 and eight months of 1919?

A. We examined all of the vouchers so far as purchases and expenses are concerned, vouchers and pay rolls; and we examined the accounts receivable blotters, so far as charges against debtors are concerned.

44436 The Master: I will not allow any further examination of the witness as to the extent of his examination of the books and records.

Mr. O'Brien: Well, your Honor, this is crucial in this case. Are you going to shut off examination here of this witness, cross-examination by me, after he has made a statement in a general form, while you were at that telephone, setting forth here what he did in the matter of examination of books, and not let me find out what it was?

The Master: You heard what I said.

Mr. O'Brien: When the tests were made; what days they comprehend; whether it was a month or a day or a year?

The Master: You have heard what I said.

Mr. O'Brien: Well, I am asking you respectfully, in a respectful manner and in a very respectful way.

The Master: The statement that I made appears upon the record.

Mr. O'Brien: I note an exception.

Q. Did you make an examination of any records at the works, or did your men examine any records at 44438
the works, records of manufacture?

The Master: The Master rules that this subject matter has been sufficiently covered, and will not allow this question.

Mr. O'Brien: Exception.

The Master: Particularly in view of the fact that these very books and records have been at the disposal of the defendants for months, and that at least one witness has made a very full report based on these books.

Mr. O'Brien: Your Honor, I am not talking about the general books of account now; I am asking the witness and trying to find out what 44439
tests he made.

The Master: I know what you are trying to find out.

Mr. O'Brien: Leading up to any conclusion as to the reliability of these books of account. He has attempted in general terms to define what he did; he has stated in such general terms that it is necessary for me to ask him further questions to get the details, both as to time and place and the character of the papers and supporting data that was examined, so that it may be identified, and so that it may be checked up.

44440

The Master: Yes, but you forgot one thing, that I went to the telephone for about two seconds, but you have not repeated that this time.

Mr. O'Brien: Well, you have put it in now.

The Master: Yes, to make sure that you would not forget it. If you think it is going to get you anywhere on this record, to make reference to the fact that out of nine months I have had occasion to answer this telephone once, let me know what happens.

Mr. O'Brien: Well, I won't enter into any controversy over that at this time.

44441 The Master: You might just as well cut out this reference to the telephone then.

Mr. O'Brien: Evidently you are led to make these rulings by some feeling now concerning my reference to your being at that telephone.

The Master: Not a bit. I am making my reference to the telephone incident because you twice referred to it unnecessarily.

Mr. O'Brien: Your Honor, at other times when you have been at the telephone during the examinations in this room here in the Bar Association Building, witnesses have suspended their answers until you got through, but this witness did not, and there is no more important answer

44442 in this case than that answer he was making while you were at the telephone.

The Master: How many times have I answered the telephone in 43 West 43rd Street since we have been here?

Mr O'Brien: That does not make a bit of difference, and I state that a minute ago, when you distinctly referred to the comment you made about requiring us to be here until 6:30, when you were on the telephone, that my mind was not thinking of what you had said about keeping us

here until 6:30, but it was on the witness's answer which he was squeezing into the record while you were talking.

The Master: You have heard my ruling.

Mr. O'Brien: You have hear my exception.

The Master: And I would have to be pretty hard of hearing if I did not hear it, in view of the tone of voice in which you said it.

Mr. O'Brien: I certainly will make strenuous objection to your Honor doing today what you have done frequently in this case, taking, after the witness for the complainant has made 44444
an answer to a question, or two or three answers, and I seek to go further, locking the door on that answer.

The Master: All right now, go ahead.

Mr. O'Brien (continuing): By saying you will not allow us to go any further with our questioning.

The Master: Go ahead.

Mr. O'Brien: I do not need to refer to any telephone nor the comments made by you to support this record. It goes to the substance of my objection, the substance of this case.

The Master: Have you anything else to ask 44445
Mr. Teele?

Q. Now, Mr. Teele, to complete the record upon this question as to how far you went, will you state whether you went beyond the gas production statistics, monthly gas reports in the main office of the complainant company or the Astoria Company's office at Irving Place and 15th Street to get your data as to coal and oil used?

Mr. Ransom: Objected to.

The Master: The record in my opinion is complete, and the objection is sustained.

Mr. O'Brien: Exception.

Q. Have you ever, or have your men examined for the purpose of checking up the figures as to material and labor, ever gone into the original manufacturing record in the works at Astoria; into the time books; into the daily foremen's reports; into the weighing reports, if any, and into the office records kept by the superintendents of the plant at Astoria?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Have you seen the tabulation that was offered
44447 in evidence when Mr. Woods was last on the stand, relating to expenses, adjustment of rents, intercompany agreements, page 14,421, and from that on, in the record?

A. I have not read the record for several days, so that I do not know what the statement is.

Q. I call your attention to the report that was received in evidence over the defendants' objections on that date, and in reference to intercompanies relations concerning jointly used or claimed to be used facilities?

A. Without comparing this with a report which I have had, I cannot say whether I have seen this before,
44448 this particular one or not.

Q. Well, look it over and see if it is in substance the same report?

A. I would not recognize it without comparing it item by item.

The Master: We have the paper here from which that was copied. Have you seen that paper before? I now hand you a paper which is the one from which that one was copied. Have you seen that before?

Mr Ransom: 1919?

A. I believe I have seen this or a copy of it. I do not know as I have seen this one.

Q. Did you use that in connection with your examination of the Astoria books?

A. I had no occasion to.

Q. Did you?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What part, if any, did your men have to do with the examination of Plaintiff's Exhibit 471 to 476?

The Master: Preparation, you mean; you said examination. 44450

Q. With the preparation of Plaintiff's Exhibits 471 to 476?

A. So far as I know, they had nothing whatever to do with them, I never saw them and don't know them even now.

Q. You made no attempt to check them up in some other form?

A. I have made my answer.

Q. Did you use them in any way in connection with your examination of the complainant's books?

Mr. Ransom: Same objection.

A. I do not know what they contain. 44451

Q. You have been in court here during the time that Mr. Carter was under examination, weren't you?

The Master: Objection sustained. I allowed a couple of questions just to see if there was any use to it, not cross-examination at all, not material at all to the issue, but I still allowed it, just as indicating how useless these questions are.

Mr. O'Brien: Exception. Your Honor, you might while you are saying that is not cross-examination, turn your attention back to these ex-

hibits and say on what theory they could be allowed in evidence as rebuttal.

The Master: Anything else for Mr. Teele?

Mr. O'Brien: I am referring to Exhibit 485 and 486, that were received in rebuttal.

The Master: Anything else for Mr. Teele?

Q. How far did you go into the accounts for the purpose of apportioning the oil used as to the coal and water gas plants?

The Master: Objection sustained.

Mr. O'Brien: Exception.

44453 Q. How far, or did you at all, or did you then, examine into the books of the New Amsterdam Company, and the underlying data supporting those books, for the purpose of verifying the accounts as to expense of the Astoria Company for oil enrichment?

Mr. Ransom: Objected to as full covered.

The Master: Same ruling.

Mr. O'Brien: Exception. That will be all at this time.

The Master: All right, Mr. Teele.

Mr. O'Brien: I note, without going into an elaborate statement, the same statements and the same comments, I repeat, that were made at the close of Mr. Chambers's examination, as to the

44454 limitations placed upon our work of going into the underlying data of the various companies that are involved in this case, the affiliated companies as well as the books and records and papers of the complainant company.

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Teele, taking the 1918 statement, Exhibit 485, you have included in the expenses of the general office an item of $6,250 for United War Work Campaign and $15,000 for the Red Cross Second War Fund. Is that correct?

A. It includes $21,250 contributions to Red Cross and the United War Work Fund, yes.

Q. Is it your testimony that that is a proper gas charge, or did you not analyze it to that extent?

The Master: Objection sustained.

Mr. Clark: I offer in evidence lines 15 and 16 of page 49 of the annual report of the Astoria Light, Heat & Power Company as a part of the schedule, "Corporate surplus or deficit account for the year," referring to those two items?

The Master: I won't take it at this time, it is no part of this cross-examination. If you want 44456
to offer it later on—

Mr. Clark: Exception.

The Master: If you want to offer it later on as an admission against interest, you may do it, but not just now.

Mr. Clark: What difference does it make when we offer it?

The Master: I want this record to be logical and in order, and it has nothing to do with Mr. Teele's cross-examination.

Q. Mr. Teele, have you in your taxes which you have set ort in the 1918 statement, Exhibit 485, made any deduction for taxes applicable to non-op- 44457
erating revenue, as you did in the Consolidated Gas Company's statement?

The Master: The question is not allowed.

Mr. Clark: Exception.

Q. You have not made any such deduction in the case of the Astoria Light, Heat & Power Company, have you?

The Master: It speaks for itself, not allowed.

Q. Can you state, there any non-operating income of the Astoria Light, Heat & Power Company to which a portion of the gross earnings tax and the Federal income tax are applicable?

44458 Arthur W. Teele, Cross.

The Master: That will be allowed.

A. This statement shows the—

Q. I just asked the question—

The Master: Is there any non-gas operating revenue of the Astoria Company?

A. There is non-operating revenue of the Astoria Company, but all the taxes that are paid by the Astoria Company are included in the computation of the charge against the Consolidated Company under the agreement.

Q. They are included. That is not taxes apply-

44459 ing—

The Master: That is perfectly clear, Major Clark. Mr. Teele says there were non operating revenues, but in spite of the fact that it might be claimed that some of those taxes ought to be apportioned to that, that he has not done it, because under the agreement between the Astoria Company and the Consolidated Company all of the taxes paid by the Astoria Company are to be charged against the gas sold to the Consolidated. You cannot have it any clearer than that.

Q. Well, can you state what the non operating revenues were for the year 1918, and a portion of the

44460 year 1919?

A. Included in the revenues of the Astoria Company there are certain amounts of interest accrued on bonds, Liberty Bonds and Government Bonds and on loans which might perhaps be considered as non operating revenue. I have made no attempt—

The Master: What does that amount to?

Q. What are they?

A. I have made no attempt to classify the revenues of the Astoria Company into operating and non operating revenues, because I have not considered that they had any particular bearing upon the preparation of these two statements.

The Master: Can you give us the amounts of those items which you thought might be called non operating?

The Witness: Well, here is interest on United States Government first 3 1/2 per cent Liberty Bonds, $304.64, and interest on United States Government Second Convertible 4 1-4 per cent Bonds, $139.72; interest on United States Government Third Loan 4 1-4 Per Cent Bonds, $17,537.39; and there is interest on Liberty Bonds, Second 4 Per Cents, that were purchased for account of the employees, and I believe these 44462
amounts, because the employees did not take them, the company took them over, amounting to $219.56; and on the Third Loan similar bonds of $1,064.37; and on the Fourth Loan, bonds similarly situated, $476.95.

The Master. The books are in evidence, we can get those figures from the books, and I won't take any more of this.

Q. Isn't there an item of over $300,000 of interest on the East River tunnel?

The Master: Yes, that is in the record, you need not bother with Mr. Teele on that—$310,000.

Mr. Clark: I think we are entitled to have 44463
him show these things.

The Master: But it is in the record. What is the use showing it four times?

Mr. Clark: I take an exception to your Honor's ruling.

Q. Mr. Teele, did you ascertain that in the amount on which the East River Gas Company pays interest to the Astoria Light, Heat & Power Company, there is included the sum of $213,000 for commission on building the tunnel, that commission having been paid to the Astoria Light, Heat & Power Company?

A. In connection with the preparation of these statements, I have not made any examination of the amounts expended for account of the East River Company, and I do not see that it would make any difference whatever what the amount may have been spent for.

Q. Will you answer my question, please?

Mr. O'Brien: I move to strike that out, that part of the answer, "I do not see what difference it would make."

The Master: The motion will be granted, and
44465 the witness requested to state whether he knows that item is included or not.

The Witness: I did not. The interest is charged on money advanced for account of the East River Company.

Mr. Clark: That is all the questions I have.

The Master: That is all, the witness is excused.

Mr. Clark: I would like to offer these portions of these annual reports.

Mr. Ransom: Just one question on re-direct

RE-DIRECT EXAMINATION BY MR. RANSOM:

The Master: No, keep them for surrebuttal.

44466 Q. Referring to these two journal entries as to drip oil, concerning which you were interrogated by Mr. Chambers, readjustment of value, do you know whether that was a readjustment as to the quantity of oil on hand, or a readjustment in the price at which the drip oil in stock was carried, in view of changed price in drip oil?

Mr. Chambers: I object to that as being argumentative and involved.

Mr. O'Brien: And leading.

The Master: I will allow it.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

A. My recollection is it was an adjustment of the price, and I can tell you in just a moment (examining papers). My analysis shows that it is an adjustment of estimated value of drip oil on hand as of June 30, 1918, gallons on hand at 12 cents a gallon, adjusted to ten cents a gallon in one case, and in the second case it is a reduction from .102 to .0903, they are both adjustments in the price and not adjustments of quantities.

Mr. Ransom: That is all.

RE-CROSS EXAMINATION BY MR. CLARK:

Q. Mr. Teele, when the Consolidated Gas Company 44468
pays interest at the rate of 7 per cent per annum, and pays that interest each month, isn't the result the payment of more than 7 per cent interest during the year, 7 per cent if paid monthly is more than 7 per cent interest on a certain sum, is it not?

A. Well, the interest is computed at the rate of 7 per cent per annum.

Q. But it is paid monthly?

A. You mean because they have the interest in hand when it is due?

Q. Yes.

A. That they have the opportunity of making use of it? 44469

Q. Yes.

A. Well, you can figure anything on that basis.

Q. Well, it amounts to more than 7 per cent?

A. The computation, or the interest charge which is made against the Consolidated Company is on the basis of 7 per cent per annum, but it is paid on the monthly basis.

The Master: Well, that is a little better return than 7 per cent?

The Witness: It results in a net return of a

little better than 7 per cent per annum, provided it is reinvested, so that it earns something.

The Master: Well, they have the power to invest it.

The Witness: It has the power to earn more.

Mr. Ransom: It really works out a little less than 7 per cent.

The Master: How can it?

Mr. Ransom: Because it is based on the monthly investment.

The Master: But how can it amount to less
44471 than 7 per cent?

Mr. Ransom: Because it does not cover the investment the whole year.

The Master: Of course, if there was a larger investment at the end of the year, then that might happen.

Mr. Clark: I have these things that Mr. Carter has gone over, if you want to take them up now. Only two out of the nine of them are in the record so far.

The Master: Only two out of nine, as to the dates of actual retirement or disused, as compared with retirements from the books?

44472 Mr. Clark: Yes.

Mr. Ransom: Have you given that list to Mr. Vilas?

Mr. Clark: Yes, and he has checked it.

The Master: Can't you make a stipulation about it?

Mr. Clark: I could read those right into the record.

The Master: Well, give the other side a copy of your statement, so that they can check it up between now and tomorrow morning, and see if you can stipulate, without wasting any time on cross-examination.

Mr. Clark: I understood that was stipulated.

Mr. Ransom: No, you have not given the list so that we could see what it would contain.

Mr. Vilas: I told Mr. Egan to give us the list this morning, and we would look at it and see what we could do with it.

The Master: Give Mr. Vilas the list, and he will see if he cannot stipulate it.

GEORGE E. WOODS, recalled in rebuttal: 44474

The Master: Mr. Woods, Mr. Chambers takes a long while to get his breath, and I have a question that I know I want to ask you.

BY THE MASTER:

Q. In this report that you made upon which the rentals are charged for jointly used facilities, you figure the value of a water gas plant at $156, and some cents, a thousand cubic feet, do you remember that?

A. $152.60, I think is the figure, your Honor.

Mr. O'Brien: Your Honor, it would be a great convenience if this was suspended until after the lunch hour. 44475

The Master: No, I won't suspend it.

Mr. O'Brien: There are a number of matters I would like to hear.

The Master: Well, then, stay right there.

Mr. O'Brien: But it is going to be chopped off here in a minute.

Q. How do you figure that?

A. I figure that in two ways, your Honor. That is, I took the—made an investigation as to the report in the old 80-cent gas case to see how the figures

would check up, and then checked it up with the Astoria construction, which was of a later date, and finally decided that the construction as of that period was about $140 a thousand, to which I added nine per cent for interest during construction.

Q. Well, can you give me a little more in detail the figures that you considered, and how you considered them? You said you figured cost of construction in Astoria?

A. I checked up the Astoria figures, to see how nearly they checked up with the figures that had been
44477 used in the 80-cent gas case, and found that approximately $140 per thousand would cover the expenditure as of that date.

Q. Of a water gas plant?

A. Of a water gas plant.

Q. Well, that was between what years was the water gas plant put up at Astoria?

A. The water gas plant at Astoria was in 1912; when I checked those figures it was after 1912.

Q. After 1912, the water gas plant was put up?

A. That was erected in 1911.

Q. The water gas plant?

A. At Astoria, yes.

44478 Q. Was that a period of high prices or low prices?

A. No, I think the prices were comparatively low at that time.

Mr. Chambers: I object to that.

The Master: Well, I can't help your objection.

Mr. Chambers: I object as incompetent, irrelevant and immaterial, and take an exception.

Q. Well, did the prices vary much between 1900 and 1912 and 1913?

Mr. Chambers: Same objection.

A. I do not believe they did.

Mr. Clark: Is this direct-examination or cross-examination?

The Master: No, it is cross-examination.

Mr. Chambers: I object to it as incompetent, irrelevant, immaterial, not proper rebuttal, and take an exception.

Q. Then really what you did, you figured the value of a thousand cubic feet of water gas plant based upon the actual cost of constructing the Astoria water gas plant.

Mr. Chambers: Same objection and exception.

A. Practically that, your Honor, yes. I used the other figure to check up, and then made a check on the Astoria accounts to see how nearly it arrived, and I arrived at a figure of $140, I think I found a figure in the 80-cent gas case of some $142 or $143, and I used the figure of $140. 44480

Q. Yes, but your judgment depended very largely upon the actual cost of constructing the water gas plant over in Astoria?

A. It did.

Mr. Chambers: Same objection and exception.

Q. That means a complete plant with necessary facilities?

A. That is a complete plant with part of the cost of the holder that was at Astoria. 44481

Q. And the necessary facilities?

A. That is right.

Mr. Chambers: This is all over my objection, I take it?

The Master: Yes. You don't know what I am getting at, and if you did you would not object.

Mr. Chambers: That is why I want to object. If I knew, I might—if you will tell me fully.

The Master: Yes.

Q. Now, this $140 plus 9 per cent, what is that, interest during construction?

A. $140 included overhead, and the interest during construction was added to that amount.

Q. And that was the figure on which you based your estimate of the value of a part of the plant capacity of the New York Mutual?

Mr. Chambers: Same objection and exception.

A. That is so. I applied that same figure to that in connection with the New Amsterdam Company and the New York Mutual Company, without making
44483 any valuation of their property whatever.

Q. But the New York Mutual plant was very much older?

A. Yes, it was an older plant.

Q. Why didn't you make an allowance for that?

A. Well, because the purpose of this report, when I had my previous reports, your Honor, was in connection with the use of these joint facilities, until I was told—instructed by Mr. Cortelyou, through Mr. Carter, to get up a report as to the use and what I believed would be a fair distribution of those charges throughout the various companies for the use of those facilities.

44484 Q. But I am talking about the figure you put against the New York Mutual part of plant capacity. What you were trying to get at, as I understand it, was what the total value of a plant was for a certain capacity?

A. That is right.

Q. Taking the percentage of that capacity for the Consolidated would be a fair way?

A. That is right.

Q. It is your testimony that in your opinion a fair charge was based upon a value of plant capacity on the basis of $152.60 per thousand cubic feet for a water gas plant?

A. As of that period.

Q. Well, this was 1919?

A. Well, I did not change the figure from 1919. That is the 1916 figure I used in connection with my 1939 report, I did not change the cost.

Q. And that related back to 1912?

A. Back as far as 1912.

Recess.

Afternoon session. 44486

GEORGE E. WOODS resumed.

BY MR. CHAMBERS:

Q. The gas that is in a holder is exposed to the air somewhat, Mr. Woods?

A. It is

Q. That is true of all the holders, isn't it—gas holders?

A. Right.

Q. How do you know, taking into consideration the interconnection of mains in the system as a whole, that some part of the increased, so-called, Consolidated Company's sendout was not due to the demands of consumers of some of the other companies on the system? 44487

A. We know what the demand is on the entire system, and we know what the ratio of the sales of the Consolidated Gas Company is to the combined sales of the system.

Q. I know, but on a given day you do not know whose consumers it is who are using up the gas, whether it is the Consolidated consumers or the consumers of some of the other companies; all the com-

panies are drawing from the same reservoir, are they not?

A. That is right.

Q. Then you cannot say on any given day that it is the consumers of the Consolidated who are using up the gas?

A. We cannot say definitely. That is, it must be assumed on the ratio of the monthly sales as to what the sendout of each company is. We have no means of stating absolutely for the hour, minute or day that one particular company was sending out a certain
14489 amount of gas that is sold.

Q. You said when you get your new water gas plant completed over at Astoria you will have a reserve of at least 23 1-2 per cent?

A. I should say that would be about the figure. I made a calculation. I think it was 23 1-2 per cent.

Q. How much additional will that plant give you in reserve, do you know, in per cent?

The Master: Well, the witness testified when he was on before he had 17 1-2, then 23 1-2, and the difference is 6 per cent.

Q. Is that right?

A. The 17 1-2 we had was on the combined sys-
14490 tem, your Honor.

By the Master:

Q. This 23 1-2 is on the combined system, is it not?

A. Yes, and the law will check up pretty nearly the same. He is speaking of the Consolidated Gas Company. In order for the Consolidated Gas Company to get a 17-2 per cent reserve they were purchasing some ten million, three or four hundred thousand from the Mutual Company, in order to establish their reserve of 17-2 per cent.

Mr. Ransom: The witness testified the reserve was as low as 5 per cent.

Q. Has the Consolidated Gas Company got today ficient manufacturing capacity in the 14th, 42nd, t and 99th Street plants, plus Astoria?

A. They have not.

Q. You would have to buy gas elsewhere or put up e plants?

A. We would.

Mr. Chambers:

Q. That condition has been true a long time, has at?

A. That condition, in so far as the time after 1918 ncerned, is true, and prior to 1918 we did not 44492
e to buy gas except for the interconnections that re on the street. We bought no facilities prior 1918 from the New York Mutual Company.

Q. Are not plant capacities used in your report, ch was read into the record the other day, the same the reports of the Public Service Commission for 8, except for Astoria?

A. I think so.

Q. And that Northern Union plant is not consid-

A. That is right.

Q. How did you arrive at the cost per thousand c feet of plant capacity as stated in your— 44493

The Master: Do you want to go all over what I went over before recess? Didn't I cover that for you when you were trying to work the ten minutes off?

Mr. Chambers: Cost per M, that is not what you were quite getting at, was it—in just that way?

The Master: Plant capacity?

Mr. Chambers: Yes.

The Master: $152.60 shows the amount per cubic foot.

The Witness: Per thousand cubic feet.

The Master: Well, you can reduce it to a cubic foot; it is 1 1 2 cents.

The Witness: Yes, I see.

The Master: You have not answered my question, Mr. Chambers. Didn't I cover it for you?

Mr. Chambers: I think you did—Mr. Hine said he followed it more closely than I. That is, I do not know whether he stated in detail how he arrived at it.

14495 The Master: I examined him very thoroughly, because I was interested in it.

Q. On page 14426 of the mimeograph record of March 1st, you stated that "Consolidated will pay Mutual for use of 10,686 M c. f. daily capacity at $205.725 per M" and that "Standard Company will pay N. Y. Mutual for use of"—well, I will leave that out. That "Central Union Co. will pay N. Y. Mutual for use of 593 M c. f. daily capacity at $205.725 per M" and then you said "Central Union Co. will pay to New Amst. Co. for use of 15,243 M c. f. daily capacity at $163.50 per M." Why did you pay the largest year $205.725 for the Consolidated?

44496 The Master: Why don't you read the report, Mr. Chambers? He added to it $19.50 per M for land over in Ravenswood, and $53 per M for land on Manhattan Island.

Q. Why didn't you take the average for all of them?

The Master: What do you mean?

Mr. Ransom: There are different companies involved.

Q. Well, average up the Consolidated and the Standard and the Central Union along with the New Amsterdam.

Mr. Ransom: I object to the question. The Central Union does not buy gas from the New York Mutual; it buys it from the New Amsterdam.

The Master: I will let Mr. Woods say why he did not take it another way, take another average figure other than the figure he did take and the method he pursued.

A. In so far as the Central Union and the New Amsterdam companies are concerned, the New Amsterdam Gas Company is the parent company of the Central Union, and had been purchasing gas and paying for the use of facilities of the New Amsterdam Company for several years prior to any time that the New York Mutual entered into the use of joint facilities. That was just continued. 44408

The Master: But the point is this. You took $152.60 plus $10 and something for Ravenswood, and you took $152.60 plus $50 and something for Manhattan, for the New York Mutual. Why didn't you average that?

The Witness: Well, I did not see any reason for averaging it, in that the Central Union had been purchasing gas from the New Amsterdam Gas Company and using their facilities, and we simply continued that arrangement. When the Consolidated required increased capacity the New York Mutual Company was the only company to call upon to get the increased capacity, and for that reason they were billed for the use of the New York Mutual plant. 44409

Q. You do not know that you are buying the gas that is made by the New York Mutual, do you?

A. But we know we are using their facilities and can call on them at any time we want them, and have called upon them, and are doing it right along.

Q. It is true also that the other companies are using the facilities of the Mutual so long as they are drawing on the reservoir for storage of gas—all companies, isn't that so, are in reality drawing upon the Mutual?

A. The gas goes into a common system. There was one reason, an additional reason. Of course, the New York Mutual Company can deliver into the system, using all of the joint facilities in the way of pipe lines and so forth, with which the New York Mutual Company are in no way involved.

44501 Q. Here they are all using gas, it is in one common system; how can you say that one company should pay more than another?

Mr. Ransom: I object to the question. It is perfectly obvious.

The Master: I will allow it.

Mr. Chambers: For the use of those facilities.

A. The only statement I can make in relation to that, Mr. Chambers, is that insofar as the New Amsterdam and Central Union are concerned, it is just as I stated before, that they had been and were using those facilities for a long period of time.

44502 By the Master:

Q. That is not an answer, Mr. Woods. Let me ask you this now: Generally speaking, does the New Amsterdam have sufficient capacity to manufacture all of its requirements and still have some left over for the Consolidated?

A. It has nothing for the Consolidated. It has sufficient for the Central Union, so that in order to supply the proper reserve for all companies in this joint arrangement it was necessary then for the Central Union to pay a portion of the charge by the New York Mutual.

Q. In other words, you figure that the deficiency in the capacity of the Central Union and Ravenswood, or New Amsterdam, went to the extent that the Central Union bought from the Mutual?

A. The use of their facilities.

Q. How about the Standard? Did the Standard require any gas from the New York Mutual?

A. They did.

Q. How did they pay for it?

A. On the same basis as the Consolidated. Whoever bought from the Mutual paid the Mutual unit price.

44504

Q. This $152.60 plus the $10?

A. That is right, $5 or whatever the figure may be.

Q. What I wanted to get at was, I gathered from Mr. Chambers' question that the Standard, for instance, paid less to the New York Mutual than the Consolidated?

A. I think it is the same. It should be the same.

The Master: On page 14426 I notice, Mr. Chambers, the statement, "Consolidated will pay Mutual for use at $205.725," the Standard the same, and Central Union the same.

Mr. Chambers: Yes.

The Master: They all pay the same price. The Central Union will pay the New Amsterdam $163.50.

44505

Mr. Chambers: That is the one; that is what I was calling attention to.

Mr. Ransom: It is a different plant.

Mr. Chambers: That is what I am asking him.

Q. What does the Consolidated pay the New Amsterdam?

A. The Consolidated does not use any of the New Amsterdam's plant facilities.

Q. So that the only company that pays the New Amsterdam for plant facilities is the Central Union?

A. That is right.

By Mr. Chambers:

Q. Is it not a fact that the facilities are really pooled and are available for all the companies?

Mr. Ransom: Objected to as fully covered.

The Master: I think that is argumentative. Objection sustained.

Mr. Chambers: Exception.

Q. You figure the Northern Union's charge on the
44507 basis of water gas, do you not, although the Central Union plant is coal and water gas both—on page 14437?

A. Right.

Q. Is that correct?

A. That is so.

The Master: Why?

The Witness: Well, that was only a matter of judgment, your Honor. I gave that some consideration, and based it on the fact that the Northern Union had no voice in the type of apparatus, that they had been making water gas at their plant, and believed if they were going to
44508 build they would build a water gas plant; and on that I believed that a fair charge to the Northern Union Company would be at that rate on a water gas basis.

Q. What do you mean when you say this represents an investment based upon the 80-cent rate case? What do you mean by that?

A. That is because, as I stated to the Master this morning, I made an investigation as to the—

By the Master:

Q. You mean the 80-cent rate case, the prior case involved in the Consolidated's test of the 80-cent law?

A. Right.

Q. Do you know anything personally about the value of these tunnels, the cost of building them?

A. The Astoria tunnel is book value, your Honor.

Q. Do you know anything about whether that represents actual expenditures?

A. It does.

Q. Do you know?

A. I made an examination of the books, yes. I took the books as of that time.

Q. You only know from the books?

A. From the books, that is all.

44510

Q. How about the Ravenswood tunnel?

A. The Ravenswood tunnel is an estimated value.

Q. Who estimated it?

A. I made an estimate on it, which has since been checked up.

Q. That is your judgment of its value?

A. That is my judgment of its value as of that time.

Q. These mains, did you figure the value?

A. I figured the value on some of them, and checked it up with the book values. I used the book values in some instances, adding in some instances overhead and interest, and in other cases interest without overhead, where the overhead had been included, as shown by the books.

44511

Q. Can you from the knowledge you have of all of these jointly used facilities say that the charges, based on values given here—that the values are correct?

A. As of that time, your Honor.

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

Mr. Chambers: I object to it.

The Master: Why?

Mr. Chambers: I do not think he has sufficient knowledge. Do you?

The Master: I think he has.

Mr. O'Brien: He has stated he has given you some estimate here that he has gathered together in a mixed way from the books, with overheads added in, and so on, and you are asking for his knowledge if this is correct.

The Master: No, I say based upon his knowledge, that I am assuming justified an opinion, the value placed upon these various facilities is the
44513 fair value at this time.

Mr. O'Brien: I object to that.

The Master: I heard your objection.

Mr. Chambers: Exception.

Mr. Ransom: He said as of the time when made.

The Master: Yes, I said as of the time when made.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

The Witness: Your Honor, when I made up these books I started back as far as 1912, when I was called upon to put a value upon and ap-
44514 portion the charges against these joint facilities. I had no more thought of testifying in an 80-cent case then than I had of being president of the United States. It was all based upon what I believe—

Mr. O'Brien: I move that that statement be stricken from the record.

The Witness (continuing): What I believed was fair and right as an intercharge between companies, and I used my best judgment as to what is contained in there. Nothing is contained in there in reference to this case whatever.

Mr. O'Brien: I move to strike out the an-

swer as not responsive, as embodying matters that are purely self-praise, self-criticism and comment, not helpful to the record.

The Master: Irrespective of whether it was fair between intercompanies, would you believe it was a fair value for any purpose?

Mr. O'Brien: Same objection and exception.

The Witness: My idea was it was a fair value, and that is what I tried to arrive at.

By Mr. Chambers:

Q. Did you take into consideration the fact that the Astoria Company was paid more than $200,000 44516
for commissions when the tunnel was built?

A. I took in the full value of the tunnel.

Q. Did you count that in?

A. Everything was counted in as represented on the books.

Q. Commissions and everything?

A. If the commissions were in there for the loaning of the money, and so forth, that was the value on the books, and what the East River Gas Company had to pay for the building of that tunnel.

Q. Didn't that $213,000 come out of operating revenue?

The Master: I do not care where it came 44517
from.

A. And I don't know.

Mr. Clark: They took it from the consumers and charged it to the East River Company.

The Master: They did not take more than 80 cents, did they?

Mr. Clark: What?

The Master: They did not take more than 80 cents from the consumers, did they?

Mr. Clark: No, but whatever they got from them.

44518

Mr. Chambers: Well, they could not take more than 80 cents.

Mr. Clark: They could not take more than 80 cents.

Mr. Chambers: They took more than they ought to.

The Master: Was it not contended that the Consolidated Company should have a profit on this 80 cents?

Mr. Chambers: They have had too much of a profit in years gone by.

The Master: Wasn't it the theory that the

44519 80 cents would leave them a profit?

Mr. Chambers: It was intended that they should have a fair return. In some years if it got more than that, and then struck a bad year, it should be offset.

The Master: But it was intended they should have a profit. Was it intended that 80 cents should show a profit?

Mr. Chambers: It was never intended that they should have more than a fair return in those years.

The Master: Was it intended that 80 cents should show a profit?

44520 Mr. Chambers: I do not know what you mean by a profit.

The Master: If you do not know what I mean by a profit, I won't ask you.

Mr. Chambers: No, I say they are entitled to a fair return only while the statute is in force.

The Master: All right, next question.

Mr. Chambers: That does not mean for one abnormal year or two abnormal years.

Mr. O'Brien: I want to say at this point—

The Master: Do not say it.

Mr. O'Brien: You do not want to hear me on the subject?

The Master: Not just now, no. I wanted to see if Mr. Chambers would answer a question.

Q. Why didn't you run Plant B and make as much gas in Plant B as you could?

The Master: I think I have covered that pretty fully, Mr. Chambers, and it has been covered in other directions. I covered it, having in mind questions that counsel for the defendants could possibly ask as indicating that perhaps too much was being charged to the Consolidated Gas Company under the circumstances. 44522

Several times I have come back to that same point with Mr. Woods, if you will recall, of my own notion—several times I have reverted to the same thing, and on several occasions I have come back and asked him whether gas would not be cheaper to the Consolidated if the plant was worked to capacity. I finally got clear in my mind just what I was trying to get at, and that is that taxes and interest on investment, perhaps, ought not all be charged to the amount produced, although that is the agreement between the Astoria and the Consolidated.

44523

The Witness: But we need their entire capacity, your Honor, and who is going to pay this difference?

The Master: I do not know.

The Witness: We not only need the capacity of the Astoria plant today, and have needed it, but in addition are paying rental on $10,000,000 of facilities of the New York Mutual—

Mr Clark: I object to this statement now.

Mr. O'Brien: I object.

44524

Mr. Chambers: I object to his continuing further.

The Master: I will make the statement, that the statement made by the witness is purely argumentative, that the time for argument will come after the case is in. I have not reached any conclusion on it, but I can see what was in my mind that I have not been able to locate more conclusively. What I was trying to say to you, Mr. Chambers, is that I really think that point has been exhaustively covered, either by questions asked by others or by myself—mostly by

44525 myself.

Mr. Chambers: Exception.

The Master: There are only two or three points in this whole case that require discussion.

Mr. Chambers: What points are they?

The Master: I will tell you that later. You will save a whole lot of time when we come to summing up if you will be able to tell me frankly what figures you agree to on the Teele exhibit as to cost of production and distribution, rather than fencing around.

Mr. Chambers: I thought I challenged all this figure.

44526 The Master: Yes, but I do not want that when we come to summing up.

Mr. Chambers: We are going to have a summing up, are we?

The Master: Yes. Judge Mayer suggested that the complainant and all of the defendants co-operate with the Court, to the end that the Court might be able to find out just what was right and what was fair, and the attitude of counsel has not been at all helpful in that respect.

Mr. Clark: I except to the Master's remark.

Mr. Chambers: I except to that, and in view of the Master's statement I now say they have not furnished us that inventory or anything.

Mr. Ransom: You had it and you lost it. It was furnished to you.

The Master: There never has been a time when I ask counsel for defendants to say to me how many pounds of coal it required, how much oil do you say it requires, when I have been able to get a statement to that effect.

Mr. Chambers: You know why, don't you? Because you have never given us a chance to cover that to our satisfaction. You kept us in court all the time. Yes, it may be funny and all that, but you have never given us a day's adjournment since we started to go ahead on the case. 44528

The Master: I will give you no more time unless you begin to ask Mr. Woods questions.

Mr. Chambers: That is the fact. I want to get the record straight on it. I think that is all for the present.

The Master: Mr. O'Brien, what have you got that has not already been covered?

Mr. O'Brien: That "already covered" proposition kind of covers me, usually. 44529

By Mr. O'Brien:

Q. Mr. Woods, for your own information and composure, and to save the heart flutter, I am going to ask you only a few questions, but please give me a direct answer and we will get through it quickly. Why didn't you come in here in your testimony in this case, as to the cost of making gas, and bring in the figures of Astoria and justify them?

Mr. Ransom: Objected to as incompetent, as improper as the remark that preceded the question.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did you ever make any suggestion to counsel for the complainant that you be allowed to verify and justify the various expenses of the cost of gas production at Astoria?

Mr. Ransom: I object to the question and call attention to the fact that Mr. Woods was on the stand and I tried to prove the Astoria figures, but Mr. O'Brien's objection thereto was sustained.

44531 The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What has been your experience with books of account?

Mr. Ransom: Objected to as immaterial and not cross-examination on any matter brought out.

The Master: I will allow it. I think that it was pretty much gone over, though.

Mr. Ransom: It was gone into at great length even now.

The Master: I will take it on Mr. O'Brien's statement that he only has a few questions.

Mr. O'Brien: Why, he has become an Alten S. Miller in the last hour, telling us about fair

44532 value and going over the books.

A. I testified in my qualifications that I had kept books for a gas company, but I did not know that I could qualify as a chartered public accountant, or whatever they call them; but I have from that time on kept in touch with accounting records.

Q. Kept in touch with it?

A. Why, yes.

Q. You have seen the books frequently?

A. Yes, and I know when I looked at them what the items usually mean or what they are intended to mean.

Q. Did you ever audit any accounts of the Astoria Company?

A. No, I got too much to do to do that.

Q. Did you ever analyze the costs that are there set forth as the investment of the Astoria Company?

A. I have gone through their investment account, yes.

Q. What do you mean by saying you went through it, that you turned the pages and saw the items as set up in the ledger?

A. Why, yes. I do not think that I went into it in great detail; I looked at the ledger and got the amount. 44534
When I went into this thing we are not trying an 80-cent gas case, and I went down there to get the facts.

Mr. O'Brien: I object to that, your Honor.

Mr. Woods: I do not care whether you object or not.

The Master: Just listen to the questions, Mr. Woods. You heard Mr. O'Brien promise if you would answer directly he would get through with you. What is the question?

(The question was read by the stenographer as follows):

"Q. What do you mean by saying you went through it, that you turned the pages and saw the 44535
items set up in the ledger?"

A. Yes.

Q. Do you know who built the plant?

A. I do.

Q. Who did the construction work?

A. It was done by various people.

Q. Who were the firms who did the construction work?

Mr. Ransom: Objected to as immaterial.

The Master: Overruled.

Mr. Ransom: Exception.

A. I could not recall all the names.

Q. Name some of them, or one of them.

A. Bartlett-Hayward; Riter-Conley did most of the engineering work, Richard Deeves did a lot of the masonry construction, a man by the name of Woodward I think did some, I do not know, there were 30 or 40 or 50 contracts, and I do not recall.

Q. What were the 30 or 40 or 50 contractors on?

A. On various things, all kinds of detail.

Q. How many of them did it on a percentage basis?

A. I do not recall.

44537 Q. Did any of them do it on a percentage basis?

A. I do not recall.

Q. You cannot remember?

A. No, I do not.

Q. Have you been over the books or the records or the papers of the company recently, or since the beginning of this trial, to refresh your mind on these matters?

A. I have not.

Q. Will you say that they were not paid upon a percentage basis?

A. I said that I did not know.

Q. Do you know whether any of the men con-

44538 nected with these companies, who have done this construction work, are connected with the Consolidated Gas Company as stockholders?

The Master: Do you know?

A. I do not.

Q. Did you ever know anything on that subject?

A. No, I do not think I ever knew. I never inquired.

Q. Do you know what percentage, of the amount set forth in the Astoria books as the investment cost on which this annual 7 per cent is computed, approximately, is overheads, general contractors' profits, ex-

penses of administration during construction, engineering fees and architects' fees?

A. I do not.

Q. Do you know how much of it represents estimated taxes during construction?

A. I do not.

Q. Do you know how much represents subcontractors' profits?

A. No.

Q. When you say you went over the ledger as an accountant, did you go into such matters.

The Master: He did not say he went over 44540
the ledger as an accountant.

A. I did not go over it as an accountant.

Q. Well, when you, an accountant, went over it, did you get into any underlying data beyond the figures in the ledger?

A. I did not.

Q. Have you ever analyzed the expenses of maintaining these tunnels, in the books of the New Amsterdam Company or the East River Gas Company?

A. No, I have not.

Q. Has anybody representing the Astoria Company been charged with the duty of monthly or semi-annually or at any other intervals going over the books? 44541

A. I do not know.

Q. With a view to verifying the alleged expenses of upkeep and repairs for the year?

A. I do not know. I have not. Those expenses would vary. You take it from year to year, they may be very heavy one year and very slight another year. This estitmate was based upon what was believed in my judgment to be a fair charge covering those items.

Q. Are you speaking now about the figures set forth in the Teele exhibits, or in these tables that were made the bases of the distribution between the companies?

A. I am speaking about my report.

Q. But come back to what I am at. There is annually included, every month included, expenses of gas production in the bills sent to the complainant company by the Astoria Company, and among the expenses, the cost of making gas, is included a certain sum of money covering use of the tunnels, the use of jointly-used facilities. Have you directed anybody under you, or do you know whether anybody connected with the complainant company has monthly, or at any other time, gone into the books of the East River
44543 Gas Company or the New Amsterdam Company to find out the expenses, the actual expenses of repair and maintenance?

A. I do not know whether it has been done or not. That would be out of my jurisdiction.

Q. Oh, that would be outside of your jurisdiction?

A. Absolutely, yes.

Q. Then the matter of the finances and the bookkeeping is not under you in any way, is it?

A. No, I am not the financial agent of the company.

Q. I am asking you a question, Mr. Woods. Are you held responsible for any bookkeeping of any
44544 kind?

A. Am I held responsible? No, I am assistant chief engineer and engineer of manufacture. I do not have anything to do with the records of the company.

Q. Aren't there Astoria bills sent monthly to the head office of the complainant, and are they not turned over for inspection to somebody under you?

A. The bill itself?

Q. The bill itself; doesn't it come to you in the usual routine and isn't it O K'd by somebody under you?

A. No.

Q. In no way is it sent to the Manufacturing Department for approval?

A. Only for checking up, insofar as materials and so forth are concerned in connection with the engineering report of the Astoria Company. Insofar as the balance of it is concerned, the Engineering Department would have nothing to do with it.

Q. I am talking about these monthly statements and bills covering the gas furnished, and which include as one of the items of expense the cost of maintaining these tunnels, and the other matters. Do not the bills come to you for approval in any form, as to any items? 44546

A. They do not for approval, no.

Q. How many reports are turned into the works office at Astoria from different parts of the plant; I do not mean in number, but how many classes or kinds of reports?

Mr. Ransom: Objected to as covered many months ago.

The Master: I will allow it again.

Mr. Ransom: Exception.

A. I would not undertake to say.

Q. Then I will ask you a few questions and perhaps it will refresh your memory. Take it from the water gas generating house, you will have daily reports come in will you not? 44547

A. Yes.

Q. You have a superintendent in charge of that unit, have you not?

A. Yes.

Q. And his daily reports are how many; how many does he make, one complete report covering the operations of the day, or are there several reports of different kinds?

A. There are different kinds of reports coming in.

Q. What are they? One covering materials used?

A. One covering materials used, another covering the general operations of the plant to show what has been going on.

Q. The amount of gas made?

A. The amount of gas made, and these statistical reports are for the purpose of analyzing each day the oil used, coal used and the period of outgo, the period of run, the pressure on the machine, the steam pressure, and water pressure, the amount of water used and the make per square foot.

Q. Is that embraced in one report, or does it come
44549 in in several different kinds of reports?

A. No, it is usually covered in one report. I get that on my desk every morning, so that I can look it over.

Q. Does it set forth the number of men employed?

A. No, that would not be in there.

Q. That would be kept in the time book?

A. Yes.

Q. Have you a time clock over there?

A. No, we have no time clock.

Q. Have you ever used a time clock at Astoria?

A. In certain parts of it we have. We check every man in and out of the gate. There is one department
44550 uses a time clock.

Q. What department is that?

A. That is the Mechanical Department. Personally I do not believe in them, but we have one in that department.

Q. How many men are in that department?

A. Several hundred.

Q. What are the other reports that come in daily to your office over there, or to the works superintendents?

A. All these things do not come into my office, they come into the general office of the Astoria plant

The amount of material that they have received, either put in or taken out of the storeroom, the oil on hand, the tar on hand, the coke that they have used, or coal, or whatever it may be. They send in their time slips to the office and—I don't know, requisitions for supplies, and all the details. I cannot recall them all.

Q. Practically, Mr. Woods, you then have a daily report that would cover the matters contained in the several columns of a manufacturing record?

A. It is a summation of that. It is simply a matter of—what I get is something for the purpose of 44552
looking at quickly, to see what has happened during the day.

Q. This finds its way into the monthly report of the main office, does it not?

A. Oh, eventually, yes; in a different form.

Q. How about weighing the coal; why don't you weigh the coal?

A. Why don't we weigh it?

Q. Yes?

A. We do weigh it.

Q. Mr. Teele said this morning that the coal was not weighed at Astoria?

Mr. Ransom: No, he did not say that at all. 44553

A. I do not know whether you are talking about generators or water gas or what. We do weigh coal when using coal for the generator house, and that is what I am speaking of.

Q. And do you think he was speaking of the generator house?

A. I do not know what he testified to.

Mr. Ransom: He said all of the coal was weighed in.

The Master: The record shows what he said. It does not make any difference.

44554

Mr. Ransom: It does.

Mr. O'Brien: I want the bare truth.

The Master: But it is not cross-examination of a matter brought out. I have been letting you go quite a long while, although in my opinion it was not cross-examination of any matter testified to by Mr. Woods on rebuttal. I am letting you go so that you may get anything that you think may be of use to this case.

Mr. O'Brien: I think this is within the bounds, your Honor—appreciating, of course, that you are liberalizing the rule, or think you are, in letting me ask these questions. These matters are within the purview of the witness's examination here. He has undertaken to criticise, and I want to find out how able he is to criticise, how much he knows about his own business.

44555

The Master: Then proceed.

Mr. O'Brien: He said he threatened to resign here, I understand, the day I was absent. He was going to leave this company if certain things happened.

The Master: Is there anything else you want to ask?

44556 Q. Mr. Woods, tell us just what the facts are in regard to weighing in the coal; if it is not weighed in in some places. Explain it.

A. Do you refer to coal gas or water gas?

The Master: I do not know.

The Witness: Neither do I.

Q. I asked you about weighing in, and you proceeded to talk about water gas sets or coal gas sets.

A. You have been catechising me on a water gas proposition, Mr. O'Brien.

The Master: Do you mean the coal delivered on the Victoria property?

Mr. O'Brien: I will ask him a question.

The Master: No, do you mean all the coal going into the Astoria works?

Mr. O'Brien: Yes, he can tell us all the coal that is weighed and when it is weighed.

The Witness: Some parts of it; I testified on my direct-examination, or in the original cross, that some of that coal is weighed and other parts are not. The coal that comes in and goes directly to the retort houses is taken from the boat, dumped into 50-ton cars, taken to a scale and weighed, delivered over a coal bopper, and it is 44558
delivered from there and goes into a crusher and up into the retort house.

By the Master:

Q. Is that the scale that you showed to Mr. O'Brien and me when we were over in Astoria?

A. Yes, when they were working.

Q. When Mr. O'Brien and I looked at some slips there?

A. I think so, yes. If the coal goes into storage it is not weighed.

By Mr. O'Brien:

Q. If it goes into scrubbers?

A. Into storage. 44559

The Master: You do not scrub the coal, do you?

The Witness: No. Some of it needs it, sometimes.

Q. You have covered, have you, all the coal, of all kinds, where it is weighed?

A. Anthracite coal would be handled in the same way. That is, the anthracite coal has been put into storage and has not been weighed on delivery, taking bill of lading weights, because we have not used great quantities of anthracite coal over there for water gas production.

Q. Well, do not get off on those side tracks.

A. That coal when it is used and going into the generator house is weighed in the same type of car, a 50-ton car, drawn over the scale such as you saw there, and that record is then turned into the office, and the weight of that car is what is charged against the generator house production for that day.

Q. Mr. Woods, let me have this right. As we saw it that day, the Master and I and the rest of the party, the coal was being taken from the barges by this im-
14561 mense crane. I forget now whether that was bituminous or anthracite coal.

A. Bituminous.

Q. The huge crane would dip down and the shovel or pocket, or whatever you call it, would remove several tons out of the lighter or the barge, and carry it over to the coal pile, would it not?

A. Right.

Q. There is not any mechanism on the crane for weighing it, is there?

A. No, not if it is delivered into the pile, as I stated.

By the Master:

Q. No, but what we saw that day, Mr. Woods, was
14562 that you ran a couple of cars under that crane?

A. Yes.

Q. And you jumped the coal into the cars?

A. Yes, that coal was weighed, your Honor.

Mr. O'Brien: I am coming to that; I am talking about bituminous. Let us follow that up to the end.

Q. Well, that was bituminous that we saw that day?

A. That is right.

By Mr. O'Brien:

Q. That bituminous is weighed and it goes into the pile, doesn't it?

A. I just made the statement, Mr. O'Brien, it is done both ways, when we are taking it out of the barge and putting it into the cars, which we do.

Q. You do not put bituminous into cars, do you?

A. That is the only way we get it to the retort house—all handled in cars.

Q. When the coal is taken out of a barge or a lighter, whatever the vessel may be at the docks there, by this huge crane operating automatically, it is taken over on the pile and dumped there, is it not?

A. Not always, only at times.

Q. At what times? 44564

The Master: It was not the day we were there.

The Witness: No, it was being dumped into a hopper below part of that unloading crane that you saw.

Q. At times it does go into the pile and at other times it does not, it goes into a car?

A. Yes.

Q. And the car subsequently is taken around and weighed, is it?

A. Yes.

Q. And the weight of the car is subtracted from the total weight of the coal and the car?

A. Right. 44565

Q. And then where does it go: the car goes over to a hopper?

A. Yes.

Q. Where is it ever weighed after that, after it goes into the hopper?

A. It is weighed after that. It is weighed on the platform scale that you saw, and then delivered on to the hopper and into the retort house.

Q. Then that is the only weighing of that kind, of the coal?

A. That is the way of weighing that kind of coal. Why should we weigh it any other way?

44566 Q. I am not asking you that; I just want to get the facts.

A. I am answering you.

Q. As to the anthracite, that comes by barges, too?

A. Yes.

Q. These cars that work on the tracks are not the cars of railway companies, they are your cars?

A. They are our cars.

Q. And they have a weight capacity printed on them.

A. They have, and we check them up and overhaul

44567 them.

Q. Do not answer something I have not asked you. Have you got the capacity on every car?

A. I do not know whether the capacity is on every car. They came in there with the capacity and the weight on every car, but the cars have been overhauled and sometimes the weight would be more or less than the original capacity weight or the tare weight of that car. We have the cars all numbered and keep track of the weight.

Q. Whoever certified to the weight of these cars?

A. Not anybody, that I know of.

The Master: I am going to stop this.

44568 Q. Nobody that you know of?

The Master: Objection sustained. I think you were examined after we visited the plant, were you not, Mr. Woods?

The Witness: I was, your Honor, yes, because you asked me a question about the plant and counsel for the defendants objected to asking me something about what you had seen over there.

The Master: My recollection is he was examined by you, Mr. O'Brien, after you visited the plant, and I think you have had ample op-

portunity to bring out anything you had in mind.

Mr. O'Brien: If this was a crucial matter would you hold the same rigid rule?

The Master: I do not know what I would do if there was any other "if" in it, but I think this is sufficiently covered.

Mr. O'Brien: If I said to your Honor that I believed that these things I am going to ask the witness—and I make the declaration I will be through with this witness at half past three at the latest—

The Master: I will make a better declaration than that. 44570

Mr. O'Brien: Will your Honor state I will not be permitted to ask these questions?

The Master: I am going to rule out the last question as sufficiently covered in this case.

Mr. O'Brien: I take an exception.

Q. How differently is the anthracite weighed, if any, from the process you have described?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Is the anthracite coal weighed after it is thrown into the hopper?

The Master: Same ruling. 44571

Mr. O'Brien: Exception.

Q. Do you use your yard stick for measuring the oil at Astoria as well as the machine for measuring the oil in the generating houses?

The Master: Same ruling. I had several days of this, I think.

Mr. O'Brien: Exception.

Q. Does the measurer turn in his reports to the superintendent of the works each day, or twice a day?

The Master: Same ruling.

Mr. O'Brien: Exception: If your Honor will

give me some outline of what you intend to do about these rulings, I will desist and save that much time.

The Master: I have tried to do that by my rulings.

Mr. O'Brien: I have tried to have the record made.

The Master: You can make it by any other questions you want to ask; keep it up as long as you like.

Q. Mr. Woods, you have testified in your direct-
44573 examination recently as to what you claim should be the capacities of the plants of complainant. Are you able to state what the pressures were during December of 1919, January and February of 1920, at any time or place?

Mr. Ransom: Objected to.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Pressures where?

Q. At the points where you take pressures.

A. Do you mean the plants? Do you mean on the street, or where do you mean?

Q. Everywhere.

44574 A. Why, I am quite sure that insofar as plant pressures are concerned, there may be a variation from day to day, depending on whether any back pressures had been established in the plant, or the amount of gas that had been made in that time, and so on.

The Master: Can you give Mr. O'Brien the pressure figures?

The Witness: I cannot give him those; insofar as the street pressures are concerned. I will say that we operate with telemetric gauges, and establish uniform and constant pressures on the district, and I will say I have knowledge that there

has been no change in those pressures. I would say that the pressures as of January and of last December, or whatever the dates may have been, you will find on investigation there is little or no pressure at those points throughout the districts.

Q. Are these street pressures recorded on charts?

A. They are.

Q. And the charts are in office of the complainant?

A. I think so, yes. I think some of them were put in evidence. I think Mr. Edgerton asked for some of the charts. 44576

Q. Do you know how the pressures for December, 1919, compared with the pressures for 1918 in the same months?

A. I do not know. I should say without having looked at them—

The Master: No, never mind.

The Witness: I have not looked at the pressures.

The Master: The witness says he does not know.

Q. Have you made any comparison of the pressures in the last few months—I mean now, the peak of the load, the stress of the winter—with similar months last winter? 44577

A. No, I have not compared them.

Q. Can't you recall how, generally, one winter compares with the other?

Mr. Ransom: I object to this whole line as not cross-examination.

The Master: He has said he had not computed them or compared them. I do not see how it is cross-examination.

Q. Is it a fair statement that the greater the—

A. I will make this statement if you want—

Q. Had you answer the last question? I will repeat it and you can answer it.

The Master: I ruled it out, Mr. O'Brien.

Mr. O'Brien: I note an exception. But your Honor has allowed them to come in here and give you a long story about how the maximum was such and such on certain days, and I submit that it is perfectly proper for me to ask the witness as to these pressures, ask him to compare them with the pressures in the same periods of a previous year, ask him to explain the pressures, ask him

14579 to explain the relation between pressure and send-out of gas.

The Master: Then, why don't you?

Mr. O'Brien: What?

The Master: Why don't you?

Mr. O'Brien: I have asked him about the comparisons and you ruled the question out.

The Master: He said he had not compared them.

Q. Well, if you found a marked difference between December of 1919 and December of 1918, what would your explanation be?

A. I would be surprised to see very much difference.

14580 The Master: Was there a difference, Mr. O'Brien?

Mr. O'Brien: Yes.

The Master: Is there any proof in the record that there was a difference?

Mr. O'Brien: Not yet.

Mr. Ransom: I object to counsel's statement. There is not a shred of evidence in the record to that.

Q. What is the Public Service Commission's rule as to pressure?

The Master: I do not care anything about that.

Mr. O'Brien: I want to know if the witness knows it.

The Master: I do not care if the witness knows it.

Mr. Ransom: We had a number of reports called for by Mr. O'Brien, for a number of days, and they were here for some days.

Mr. O'Brien: Yes, and tomorrow I will use them.

Q. I ask the witness to state what the Public Service Commission's rule is as to pressures? 44582

Mr. Ransom: Objected to as incompetent.

The Master: I have instructed the witness not to answer it.

Mr. O'Brien: Exception.

Q. Why has the complainant company violated this rule as to pressures?

Mr. Ransom: I object to the outrageous statement of counsel.

The Master: Objection sustained—without stating whether it is or is not outrageous.

Mr. Ransom: Even Mr. Hine said there was not any.

44583

Mr. O'Brien: Exception.

Mr. Chambers: Mr. Hine did not say that.

Q. Will you state what relation the pressure has to the sale of gas?

Mr. Ransom: Objected to as not cross-examination.

The Master: But I will take it.

Mr. Ransom: It was gone into in detail before.

A. Why, if there was a shortage of supply, the people could not get the gas; they might use more if

they had their pressure, insofar as heating and so forth is concerned. Insofar as cooking is concerned, I do not think it would make a particle of difference. They might use a little less gas with a higher pressure. Their efficiency might be so much better if they wanted to cook a steak or broil a chicken.

The Master: I have heard all that before.

Q. If it is a low candle power gas they would use all the more, too, would they not, Mr. Woods?

The Master: Objection sustained. It is not cross-examination of anything else in this rec-

44585 ord.

Mr. O'Brien: Exception. I understood your Honor was going to permit me to ask those several questions.

The Master: I have let you ask as many as I wanted to.

Mr. O'Brien: I assumed from that you would allow me to bring out from the witness just where those pressures were taken, the difference between the pressures at the works and the pressures on the district, the relation between the pressure and the sale and use of gas.

The Master: I have let you ask all I think

44586 I will let you ask now.

Mr. O'Brien: I will put one more now, and try you out.

Q. Mr. Woods, if the company saw fit to do it, they could during the months of December and January and February last, by increasing the pressures during the cold weather, increase materially the send-out and the use of gas?

A. I don't think it would have increased the use of gas, but I am quite sure the company would never do anything but what would be to the benefit of the

consumer, and they would not try any sharp practices with a view of doing anything of the sort.

Q. I did not ask you that.

By the Master:

Q. If they wanted to get that increased use of gas, could they do it?

A. We could increase the pressure, your Honor, but I do not think it would increase the consumption.

Q. That is what Mr. O'Brien wants to know. If the company wanted to increase the consumption, could they do it by increasing the pressure?

A. They could not. They could not make the 44588
people burn the gas by increasing the pressure.

By Mr. O'Brien:

Q. Take it in my house, now, we have several sets of gas logs.

A. After you got the house warm, you could shut off the gas ten minutes earlier.

Q. But you are going to use more gas in a little less time, possibly in one minute, are you not?

A. Yes, you could, but if you were not wasteful you would shut it off as soon as the room got to the right temperature, and if you had less gas you would burn it for a longer period of time, of course.

Q. Then if the heat died down in the room you 44589
would light it up again, would you not?

The Master: Yes, and you can do that all afternoon. The question is not allowed.

Q. Meanwhile the gas bill would be going up?

The Master: The question is not allowed.

Mr. Ransom: If the company was not worried about supplying all the consumers—

Mr. O'Brien: Your Honor, you tried to put a ludicrous tinge on the situation—the connection between pressure and consumption of gas.

The Master: Let us see how ludicrous it was. You asked him first whether you would not be using more gas per minute, and he said yes, but he said when your house got warm you would shut it off. Then you said when it is cool again you turn it on, and he said yes. Then when it gets warm again, you shut it off. I say that could be kept up all afternoon.

Mr. O'Brien: I did not repeat it twice.

The Master: I would not let you.

Mr. O'Brien: I only shut it off once.

44591 Q. Then, substantially, Mr. Woods, your answer to this question I put to you about the relation between pressure and use is that the consumers regulate what they want to consume?

A. That is so.

Q. And when they get tired, or indifferent to using any more, they will shut it off?

The Master: He did not say that.

A. I have a gas log in my house, Mr. O'Brien. I give it the amount of gas I want.

Q. Now, I have asked you a question.

The Master: You worked your house in, and I think it is only fair that Mr. Woods should work his house in. I am going to have Mr. Woods tell about his house, that is all.

44592

Mr. O'Brien: That is a special connection.

The Master: I will take it.

The Witness: I have a gas log in my parlor that I use sometimes when the heat is not sufficient from the furnace; I turn on the burner and I light it, and I regulate it to such height as I want the flame.

Q. How often do you go over these pressure charts?

44593

The Master: I will sustain an objection.

Mr. O'Brien: Exception. Your Honor, I do not know how I am going to get through with this proposition, or this examination of the witness, as to what they claim to have been the wonderful output of the last three months, unless you will let me go into these matters that you seem to think are not proper cross-examination. They are all involved in this question.

They have made representations here as to how they are reaching so close to capacity. Of course, that is controverted by the defendants, and I think your Honor ought to permit me to 44594
pursue this examination further, to bring out the opportunity, if nothing more, that the company has of just camouflaging with what they call the maximum load per day.

The Master: No, I will not do it.

Mr. O'Brien: It is a matter of easy regulation. They can play on the system they have there just as an artist might play the organ, pull out and push in any stops they want to serve their purpose; and if those figures do not mean anything, they have not dealt fairly with the Court by coming into court here and giving your Honor the figures for the number of days in 44595
succession. They have picked out here—

The Master: Let me interrupt you, will you? The answer to that is this: It is quite clear from Mr. Woods' testimony that this company could, by increasing pressure, drive out more gas or force more gas, if you would like to put it that way, into the burners. Now any argument you want to draw from that statement of fact I will listen to. What is the use of wasting any more time about it? I do not want to hear it now, that is all.

Mr. O'Brien: If your Honor wants what is in my mind, I think we might by pursuing the examination, and I think I am perfectly competent to bring out from Mr. Woods that he does not know the details of a lot of these things, or if he does he will not come out frankly and discuss them with you. They have come here and in six months of the trial they have not put the cards on the table by telling you the details of these things. Mr. Teele has come in with a general statement, without presenting you the figures, as Mr. Sangster did. Mr. Woods has not come forward with the details of his whole story, as Mr. Little has.

44597

The Master: That is argument.

Q. I will ask you, Mr. Woods, why didn't you bring in the send-out of a number of days in succession?

Mr. Ransom: Objected to. That is exactly what he did do.

The Master: What do you mean by a number of days? He brought in a week there in succession.

Mr. O'Brien: Why, you have got it here, page 14407 of the mimeograph record.

44598

Q. I will ask the witness now, in order to be fair to the defendants, to give us what he claims to be the send-out of the Consolidated Gas Company for every day in December or January, and if you have not them in court, to read them into the record when you get them.

The Master: No, you can get them and read them into the record as part of your case.

Mr. O'Brien: This is the only way to get them.

44599

The Master: Send somebody down to the works and get them.

Mr. Ransom: The witness had, at least I know he had, and your Honor would not let me put in, the average during January and February.

The Master: No, that is not what Mr. O'Brien wants.

Mr. O'Brien: I will abbreviate this examination, your Honor, if they will read in or the witness will give us what he claims to be the send-out of the Consolidated Gas Company for every day in December, January and February, what the daily make is of each plant, and the daily send-out of each plant, for each one of these days.

44600

The Master: Can that be gotten up by tomorrow morning?

The Witness: I do not know whether it can be gotten up by tomorrow morning; I will try to get it up.

The Master: See if you can get it up, and if you can I will let you put it in.

Mr. O'Brien: You understand, the send-out of each plant.

The Master: Yes, he will get you what is now on the record.

44601

Mr. O'Brien: The daily make, the daily send-out of each plant, for November, December and January and—

The Master: You have added a month now. I will take December, January and February, that is all.

Mr O'Brien: November, perhaps, would help your Honor.

The Master: No, I will take December, January and February. What else do you want for those months?

Mr. O'Brien: I want the total send-out of the company for each day of these months, and then, as I have stated the daily make and the daily send-out for each plant.

The Master: What else?

Q. Mr. Woods, who is in charge nights of the work? Do you work frequently at night, I mean in distressful days of the winter are you in charge at night, too?

A. I am.

Q. Have you made a practice of sending directions
14603 to the men in charge of each plant?

A. I very frequently telephone, yes.

Q. Have they been given any oral instructions by you to shut down?

A. To shut down at night? There may be periods of time, by reason of the stock on hand at any particular time, that I might tell somebody to have one of the plants drop one or two machines, in order that the holders—because we won't have room to put the gas at times.

Q. How many times during the months of December and January have you or has any assistant of yours sent word to the plants to shut down, that
14604 the holders were full?

A. I would not undertake to say. On Sunday night that might happen quite often.

Q. Has it happened on other nights than Sunday?

A. It might be possible if we had a very cold day, when the send-out was heavy and we were running everything to full capacity and it became warm, in all probability we would shut down and we would let off some of our water gas machines.

Q. How do you regulate that control, the headquarters or at the main office?

A. No.

Q. Where are they?

A. We get in our hourly readings from the 42nd Street, and we use the 42nd Street station as a sort of clearing house, as it were. Any time I want information as to the stock on hand or what they are all making, I can get it at one point.

Q. Mr. Kellogg takes charge of it, does he?

A. He is there during the daytime. We have clerks on it day and night.

The Master: We have been all over that.

Mr. O'Brien: I recall.

Q. Do you make that your headquarters when 44606
you work at nights?

A. No.

The Master: Do you keep in touch with it by telephone?

The Witness: I do, yes.

Q. Is that matter of giving your instructions to the several stations—is that solely confined to you or an assistant of yours?

A. No, if I should go away it would keep on just the same.

Q. Who would take charge of it in your absence?

A. Why, Mr. Franklin handles it quite largely, and then he has several men under him. 44607

Q. The men at the stations do not know the facts of the case, they will take the directions that are given them to stop making gas, if they get them over the telephone?

A. They will, if it comes from that point.

Q. Have there not been many times during the months of December, January and February when they did stop making gas at night?

A. Never in any place that I know of—stop making gas, I mean. There has been a reduction in the production.

Q. That is what I mean.

A. There has been a reduction, yes.

Q. Frequently during these months?

A. Oh, yes, when you have the wide variances of send-out, that is so. We do not run the plants the same every day. If we did we would have Mr. Little's 300 day proposition.

Q. Did you have that wide variation during the past three months that you have been hinting at now?

A. Yes, we have had a wide variation.

Q. Has not the temperature been down pretty con-
44609 stantly during the three months we have gone through?

Mr. Ransom: Objected to. The temperature charts would be the best evidence.

The Master: I will let Mr. Woods answer that.

A. I think I made up a figure of one wide variation which we have had. We have had wide variations, but in three days there was a difference in send-out of 40,000,000 cubic feet.

Q. Mr. Woods, you brought in certain days, two days at a time. I am asking you now for a general answer as to the last three months. Has it been
44610 quite uniformly cold?

A. It has been cold weather, but the send-out has been quite variable, Mr. O'Brien.

Q. Owing to the pressures?

A. Owing to the fact that the people did not use the gas.

Q. It is up to the consumer, you mean?

The Master: We have worked all around in a circle, and we are back to the same point. Objection sustained.

Mr. O'Brien: This gives your Honor some idea of the untold chapters in this story.

The Master: I have told one. Mr. Woods is waiting for a question, Mr. O'Brien.

Q. You were asked on page 14468 of the mimeograph record what was the highest week's requirements during the present winter, that is, seven consecutive days. Is that the seven days that counsel referred to when he said they were already in the record, there was a story of seven days' send-out?

A. Probably that is what he meant.

Q. Seven single days' send-out?

The Master: Seven consecutive days.

Mr. O'Brien: The total would not be what we want, your Honor. When Mr. Ransom comes back, as he frequently does, and says it is in the record, we have produced it, I ask him to make good on that. 44612

The Master: Next question.

Q. Did you in your testimony here on Monday, Mr. Woods, give the send-out on each day for seven consecutive days?

The Master: The record, I think, so shows, does it not?

Mr. Ransom: You would not allow him to give the amounts for the seven days, but just the average. I tried very hard to get it in. 44613

The Master: But I finally let it get in, my recollection is.

Mr. Ransom: You allowed him to give all the days over 90,000,000, as I recall it.

The Master: That is so, yes.

Mr. Ransom: And he gave the average for the seven consecutive days.

The Witness: That was the sheet you handed me. I did not have it and you handed it to me.

The Master: Yes, that is right. Go on, if you want the seven days, you can have it.

The Witness: I have not that information with me now.

The Master: My judgment at that time was that it was not proper direct, but if you want it you can have it.

Mr. O'Brien: We will have these seven days when we have the three months, your Honour.

Mr. Ransom: I have the seven days right here, the figures that Mr. Woods gave me. January 14th to 20th, both inclusive.

14615 The Master: Do you want these seven days, or do you want to wait until you get your three months?

Mr. O'Brien: It will be included in the three months.

The Master: Then do not bother with that now.

Mr. Ransom: That is the seven days that average 2.2 that he testified to—Consolidated also.

Q. You said on page 14410 of the minutes of record in answer to the question by the Master:

14616 "Q. What regulates that, sir? 90?

"A. People putting the gas on and off.

"Q. In other words, you mean that as the gas is used, as you find gas being used, you have to keep making more gas?

"A. Absolutely.

"Q. In other words, if the holders go down you have got to keep filling them up?

"A. Absolutely."

You did not intend to have the Master believe that that was the only thing that affected the send-out, did you?

A. Why, I don't know what else would affect the send-out but the use of gas.

Q. There are many things besides that which would influence or affect the send-out, are there not?

A. That and the unaccounted for.

Q. Assume a case where the gas is running bad, with very low candle power, that would have a strong effect upon the use, would it not?

A. But we do not have the low candle power or very bad gas that you speak of.

Q. I did not ask you that, Mr. Woods. Is it not a fact that if the candle power was low, the people, 44618
to get the service they wanted, would have to take more gas?

A. Not necessarily so.

Q. How would they get it otherwise?

A. If the gas had a good heating value it would not be affected by that.

Q. Suppose it had a low heating value, wouldn't they have to get more of it to get the service they wanted?

Mr. Ransom: Objected to. It has been gone over twenty times already.

The Master: I will let Mr. Woods answer that question. 44619

A. Well, naturally so. The people—

The Master: That is the answer. I was going to sustain it on the ground it is self-evident, but I thought I would let Mr. Woods say so.

Q. What other things would influence the sale or the use of the gas?

Mr. Ransom: I object to it.

The Master: I will allow it. Do you know of anything else?

A. I do not recall anything at the moment, no.

44620

The Master: Do you know of anything else, Mr. O'Brien?

Mr. O'Brien: Why, the point is, your Honor, he apparently tried to have the record show in his answers to you the whole thing that dominated the question or the end out was whether people turned on the stopper or stoppered the cock or not.

The Master: Do you know of anything else that you want to direct his attention to?

The Witness: And that is a dominant factor.

44621

Mr. O'Brien: That is a volunteered statement. I ask that it be stricken from the record.

The Master: Yes, I will strike it out.

Q. When did you get up these tabulations, Mr Woods? Was it 1912, looking toward the agreements?

Mr. Ransom: Objected to.

The Master: The question is not allowed.

Mr. O'Brien: I want that for my information, your Honor, in asking the next question.

The Master: It has been fully covered.

Q. Were you chief engineer at the time that you

44622

made this report which was put in the record on Monday of this week, found on page 14421 and following pages of the record?

Mr. Ransom: Objected to. It has been gone over many times.

The Master: Objection sustained.

Q. Or was Mr. Bradley chief engineer at that time?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What was your relation at that time to the other companies in the system?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. For instance, were you a consulting engineer in the Central Union Gas Company; were you consulting engineer?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did you have any official relation with the Standard Gas Light Company at that time? 44624

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Or with the New Amsterdam and East River Gas Company at that time?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did you examine the accounts of the contractors who built the Astoria and Ravenswood Tunnels?

Mr. Ransom: Objected to as fully covered.

The Master: Sustained. 44625

Mr. O'Brien: Exception.

Q. Did you get into the underlying data, the subcontractors' bills and all of the supporting data leading up to the alleged cost of these two tunnels?

Mr. Ransom: Objected to as incompetent.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Was any direction given to you as to the manner in which you should recommend the distribution of these expenses among the various companies included in this agency or intercompany arrangement?

Mr. Ransom: Objected to as incompetent.

The Master: No, I will allow that.

A. I was instructed to make a distribution in accordance with the facts and in accord with my judgment.

Q. Was any suggestion made as to what might be a fair distribution?

A. There was not.

Q. Has this been the contract ever since that time—the arrangement between the companies? If not, when has it been varied?

14627 Mr. Ransom: This document of May, 1919, you mean?

The Master: Yes, has this been changed?

A. Insofar as I know, that is the last. I have not made any since then.

Q. There had been an arrangement covering that subject-matter for some years, had there not?

A. Yes.

Q. Why was it altered in May of 1919?

Mr. Ransom: Objected to.

The Master: Objection sustained on the ground it has been fully covered.

Mr. O'Brien: Exception.

14628 Q. Was not one of the results of its alteration to put a heavier burden on the Consolidated Gas Company and a lighter one on the other companies as of that date?

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: It is after half past three, Mr. O'Brien.

Mr. O'Brien: I am practically at the end, your Honor. I think these rulings will probably shut off further questioning.

Q. Did Mr. Bradley have anything to do with this report?

The Master: With reference to making it up, he means.

A. No, not with reference to making it up, but that report was reviewed by the officers of all the companies that were interested.

By the Master:

Q. No, Mr. O'Brien's point, I imagine, is, did Mr. Bradley have anything to do with affecting your judgment as to the figures; did he work on it with you?

A. He did not. 44630

Q. Did he discuss any figures with you or suggest any figures?

A. No.

Q. Such as any division—to you?

A. No, he did not.

Q. Did he have anything to do with it before it was prepared?

A. He did not.

By Mr. O'Brien:

Q. Did you consult with him at all about it?

A. Oh, I think I may have had conversations with him about it, but it was all—

Q. Can't you say, as a matter of fact, whether 44631
you did or not?

A. That particular report, I do not think I discussed the matter with Mr. Bradley until it was finally completed and until the officers of the various companies reviewed my report.

Q. Why didn't you consult the chief engineer before you turned in this report and while you were getting together your conclusions?

A. I had been working on these reports and the thing had been delegated to me for the purpose of

making the report, and the matter was subject to his revision after the completion of it.

Q. But you say you did not consult him about it?

A. I say that after it was completed he was one of the officers who reviewed the report.

Q. Do you know that he did review it?

A. I do.

Q. How do you know that; were you present?

A. Yes.

Q. At a conference?

44633 A. I was.

Q. At which he took part?

A. He did.

Q. Mr. Bradley had something to do with the original arrangement, did he not?

A. He probably did; I do not know.

Q. It was his arrangement, was it not?

A. It was not.

Q. When you say it was not, what do you mean?

A. I will stand sponsor for it, whether it was good or bad, Mr. O'Brien. It was my report.

Q. In the beginning?

A. In the beginning.

44634 Q. I mean back when you first had an intercompany arrangement of this kind, who was responsible, who got it together?

A. I got it together.

Q. Did Mr. Bradley tell you how to distribute the expenses, or approximately how to distribute them?

A. He did not.

Q. He gave you no directions on it?

A. I don't recall that he did. I was instructed by Mr. Carter, by Mr. Cortelyou through Mr. Carter, to go into the distribution of these joint facilities.

Q. Then you did not get your directions from your immediate superior, Mr. Bradley, on that matter?

A. I don't think I did.

Q. Your instructions came from Mr. Carter.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Woods, you took these figures off the books, did you, where you set forth on page 14427 certain items of value; you took them off the books?

The Master: The question is not allowed; it has been sufficiently covered.

Mr. O'Brien: I have consulted my colleagues 44636
to make sure about that, your Honor, and they agree with me that it is not covered.

The Master: I have consulted the Master, and as a result of that conference I have made my ruling.

Mr. Clark: This was not touched upon by Mr. Chambers.

Mr. O'Brien: I will make the record. I now propose to ask the witness questions as to where he secured or how he put together various figures purporting to represent values of properties on page 14421 of the mimeograph record, through to the end of his testimony, in tabular form, or 44637
through to the end of the tables presented. I propose to bring out from the witness whether they are entirely book figures taken by him in the form in which they are presented, from the books of the companies which are involved in the inter-company contracts on these jointly used facilities, where he got the items particularly that are set opposite the inscriptions, such as value of New Amsterdam Company and East River Gas Company and of Long Island property $6,723,000, value of property of the Consolidated

14638 Gas Company, value of property of the Standard Gas Light Company, and the various valuations placed upon the mains and the tunnels by the witness, so as to show just where he derived those figures from. Further, as to where all of the data set forth in these tables were secured I am willing to go further than any questions have gone in the examination of the witness up to the present time, and understanding that your Honor will not permit further questioning along that line, I take an exception to your Honor's ruling. That is your Honor's ruling, I assume?

14639 The Master: If it were not I would not let you take an exception.

Mr. O'Brien: I just want to have it clearly understood, your Honor.

The Master: You have it perfectly clear, and you have taken your exception.

Mr. O'Brien: Now, I move to strike out the testimony contained in pages of the mimeograph record, all of the testimony of the witness Woods given on Monday, March 1st, on the question of jointly-used facilities, and in particular the tabulations, with the various inscriptions, headings, subtitles, that the witness uses on the pages

14640 14421 to 14442.

The Master: Motion denied.

Mr. O'Brien: I take an exception to your Honor's ruling.

Mr. Chambers: I move to strike it out on all the grounds I urged at the time it was offered in evidence.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Mr. Clark, have you anything?

Mr. Clark: Yes, just one question.

The Master: Proceed.

By Mr. Clark:

Q. Mr. Woods, am I correct in assuming from your testimony, or is it the fact that December 17, 1919, was the day of maximum output of the Consolidated Gas Company for the year 1919?

A. I think that was about the date.

Mr. Clark: That is all.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Woods, can you now give the maximum day's send-out of the Consolidated for each year from 1906 to the present time?

A. I can. 44642

Q. Will you do so.

Mr. Clark: I object to this on the ground it is not re-direct.

The Master: Overruled.

Mr. Chambers: Exception. I object to that as incompetent, irrelevant and immaterial, not proper cross-examination.

Mr. O'Brien: Your Honor, I had intended in examining this witness just now to cover a lot of matters like that, the question, for instance, of how many times the company in a period of fifteen years has gone below five per cent reserve, and various questions of that kind, which I refrained from because of possible objection that we were going into new matter. 44643

The Master: I will take the answer.

Mr. Chambers: Exception.

A. December 24, 1906, 57,396,000; December 24, 1907, 57,271,000; December 22, 1908, 56,389,000; November 23, 1909, 63,278,000; December 24, 1910, 64,919,000; January 3, 1911, 61,835,000; January 9, 1912, 66,631,000; January 8, 1913, 63,537,000; January 13, 1914, 70,498,000; December 13, 1915, 60,312,000; December 22, 1916, 66,919,000; Decem-

ber 31, 1917, 85,768,000; February 5, 1918, 88,742,000; December 18, 1919, 95,571,000; January 31, 1920, 99,243,000.

Q. That is, you have given the maximum day's send-out in each winter since 1906?

A. Right.

Mr. Chambers: I move to strike it out as not being proper rebuttal.

The Master: Motion denied.

Mr. Chambers: Exception.

Mr. Ransom: That is all.

44645 RE-CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Woods, where did you get these figures from that you have just given?

A. From the records of the Engineering Department.

Q. I mean did you go and look them up?

A. No, they were gotten up under my direction. I did not go and look them up myself.

Q. Who got them up?

A. A clerk in the office.

By the Master:

Q. Did you check them up at all?

A. I did not check that figure, your Honor.

44646 Q. You do not know anything about that statement given you?

A. No.

The Master: I will have to strike that out.

Mr. Ransom: Will you not wait until tomorrow morning?

The Master: No.

Mr. Ransom: Are they known to you to be correct?

Mr. Chambers: No, he says he does not know anything about it.

The Master: No, I will have to strike it out.

Mr. Chambers: The motion to strike out is granted?

44647

The Master: Yes. Who else have you got; anybody else?

Mr. Ransom: I think that is all.

The Master: That is all of your rebuttal?

Mr. Ransom: Of course, there is that situation with respect to the matters that Mr. Clark has not finished. So far as I know now, that is all of our rebuttal, except that I will have to deal with the situation produced by the nonconformance of the supposed tabulations of certified candlepower with the summaries.

The Master: That will be a matter for argument.

44648

Mr. Chambers: Does the complainant rest or not?

The Master: Mr. O'Brien has one question of Mr. Woods, as to these figures that he wants produced, otherwise I should say that the rebuttal was closed. But I cannot very well do it unless Mr. O'Brien waives that.

Mr. Ransom: But it is not anything that we want, it is something that he wants. If he wants to call Mr. Woods on surrebuttal he can do so.

The Master: On the statement of Judge Ransom I will note the rebuttal is closed, and I will permit Mr. Woods to put in that statement.

44649

Mr. O'Brien: I might state, your Honor, there will be no examination by me on those in connection with these figures produced.

The Master: The rebuttal is closed. Is there any surrebuttal?

Mr. Chambers: Does the complainant rest?

Mr. Ransom: The complainant rests.

Mr. Chambers: I now move to dismiss the complaint.

The Master: Do you rest?

Mr. Chambers: No, I have some rebuttal.

44650

The Master: Then put it in.

Mr. Chambers: I think my motion is in order.

The Master: No.

Mr. Chambers: I move to dismiss, now, the complaint, because it affirmatively appears from the fourteen grounds which I urged in detail at the close of their case, and then again at the time we were compelled to stop putting in our proof, and now at the close of their rebuttal, on these fourteen grounds, and also on the additional grounds I urged at the time that we were forced to close our case.

44651

The Master: The Master declines to consider any motions to dismiss at this time in view of the statement that the defendants have surrebuttal testimony.

Mr. Chambers: Exception.

Mr. O'Brien: I join in the motion of Mr. Chambers.

Mr. Clark: I also join in it.

Mr. Ransom: I understand the case is closed?

The Master: No, they have some rebuttal, they say.

Mr. Chambers: But I think we ought to adjourn now until tomorrow morning, or that we should have a reasonable adjournment.

44652

Mr. O'Brien: I would like to say that I have - we very important matters on, the presentation of a brief to Judge Greenbaum, and I would like to be given an hour today, at least, to look it over.

The Master: You have. You have a couple of weeks.

Mr. O'Brien: He sets the hour, your Honor.

The Master: Then he will have to reset it, that is all.

Mr. O'Brien: But I cannot get the time, as far as I know—further time on the brief.

The Master: The case in surrebuttal will be pretty short, and you can probably get away by five o'clock. You can have ten minutes' recess now.

Mr. Chambers: Note my exception to the ruling that we cannot have time to prepare our rebuttal.

44654

FRANCIS T. MYLOTT recalled as a witness for defendants in surrebuttal:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Mylott, did you make a tabulation of the candle power data of the daily record of the manufacture of the 99th Street station?

A. I did.

Q. Did you put upon the table the company's tests and the City's tests?

A. Yes, sir.

Q. You did that from 1916 to 1919, inclusive?

A. Yes, sir.

44655

The Master: This is from what exhibit?

Mr. Chambers: This is from the manufacturing book that was here yesterday.

The Master: Of the 99th Street station?

Mr. Chambers: Yes.

The Master: He has just copied that off?

Mr. Chambers: Yes.

The Master: What is the point of it?

Mr. Chambers: I want to offer it in evidence.

Mr. Ransom: It is not surrebuttal.

Mr. Chambers: As an admission against interest.

Q. Did the record show where the tests were made at the 99th Street station?

The Master: This exhibit?

Mr. Chambers: Yes.

Mr. Ransom: I object to it.

The Master: Objection sustained.

Mr. Chambers: The heading was, "Tests, 79th Street."

The Master: Objection sustained.

Mr. Chambers: Why?

The Master: The book is in evidence.

44657 Mr. Chambers: I don't know about that.

The Master: Well, I do. The 99th manufacturing record is in evidence.

Mr. Chambers: We only offered in evidence a page or two, or part of a page.

The Master: No, you offered the book.

Mr. Ransom: The whole book is marked.

Mr. Chambers: I beg your pardon. I know you claim that. We offered that book in evidence for a couple of pages. I now offer so much of the same record as shows on this sheet.

The Master: The whole book is in evidence and I so rule.

44658 Mr. Chambers: I take an exception.

Q. Does this correctly show the candle power tests of the company and the City?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial and not surrebuttal.

The Master: Objection sustained. The original book is the best evidence. It is in court, or was in court.

Mr. Chambers: Exception. I offer in evidence this tabulation as an admission against interest.

Mr. Ransom: I object to it as not surrebuttal and incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception. You said you would take tabulations.

The Master: Well, I won't take this.

Mr. Chambers: The particular tabulation that I offer in evidence is in tabulation—

Mr. Ransom: I object to his stating what it is.

Mr. Chambers: A tabulation of the daily record of manufacture of the 99th Street station, showing the company's candle power tests for the month of January, by days, at the 79th Street testing station; also the City's tests at the same station. 44660

The Master: For what month?

Mr. Chambers: For January, 1916, January, 1917, January, 1918, and January, 1919, excepting possibly the last two months there, which may be over the dead line.

I take an exception to the refusal to admit it.

Q. I show you another tabulation and ask you if that is tabulated from the daily record of manufacture of the 99th Street station?

A. Yes, sir.

Q. And is it correct?

A. Yes, sir. 44661

Q. It shows the candle power tests of the company and the City tests?

Mr. Ransom: I object to that.

The Master: This is copied from the same book?

Mr. Chambers: Yes.

The Master: Objection sustained.

Mr. Chambers: I take an exception.

The Master: The book is in court.

Mr. Chambers: There is some doubt in my mind whether it is in for all purposes.

44662 Francis A. Mylott, Direct.

The Master: Well, if the book is not in, offer it.

Mr. Chambers: I offer so much of that manufacturing book simply for the purposes of admission against interest, only so much of the book as shows the candle power tests made by the company and by the City, as appears in that book, for the month of January, 1916, January, 1917, January, 1918, and January, 1919.

Mr. Ransom: I object to it as not surrebuttal. That book was received in evidence, offered by the defendants.

44663

The Master: If, by any chance the matter you referred to is not in evidence, it is now in evidence. If by any chance there is any confusion about my taking the whole book, I will correct it now by stating that I intended to take the whole book. There wasn't any sense in my taking part of the book.

Mr. Chambers: We have a right to offer a certain page of a record of theirs in evidence for certain purposes, which we did.

The Master: It was my opinion when that was offered, and it is my opinion now—

44664

Mr. Chambers: We don't want to offer the whole thing, we never did.

The Master: It is my view that a book of this character, the entries in a book of this character are so much related to each other, and so bear upon each other that it is impossible to offer part without taking it all.

Mr. Chambers: It is not impossible to offer those candle power tests for that month clear through.

The Master: The book is in evidence and it is not necessary to take any more.

Mr. Chambers: I offer this tabulation and ask that it be spread upon the record.

44665

Mr. Ransom: Objected to on the same grounds as before.

The Master: Objection sustained.

Mr. Chambers: Exception. I offer a tabulation, which the witness says is correct, for the month of February, 1916, February, 1917, February, 1918, February, 1919.

The Master: From the same book?

Mr. Chambers: Yes.

The Master: Copies of entries from the same book?

Mr. Chambers: Yes.

44666

The Master: Objection sustained. I will hold that as to every month in the year that you have tabulations for.

Mr. Chambers: A moment ago I said as to January, 1919, being over the dead line. That would not be so as to January, 1919.

The Master: I will assume that you have had Mr. Mylott make a tabulation for every month of the year in those years.

Mr. Chambers: No, you are a little ahead of my story. I was offering January and February for 1916, 1917, 1918, and 1919, for the 99th Street station, and October, 1916, 1917, 1918 and 1919 for the same station.

44667

Q. You made those, and they are correct, Mr. Mylott?

A. Yes, sir.

The Master: Same ruling, the book is in evidence.

Mr. Chambers: And also for December, 1916, 1917 and 1918, and for 1919, down to August 31st, at least.

The Master: Same ruling. The book is in evidence.

Mr. Chambers: Exception.

Q. Did you tabulate the candle power tests made by the company and the City for 1916, 1917, 1918 and 1919 for the month of February as taken from the daily record of manufacture of the 21st Street station?

The Master: I will sustain that objection on the ground that the book is the best evidence.

Mr. Chambers: I offer this tabulation in evidence.

The Master: I won't take it as a tabulation.
44669 It is simply a copy of a book, and we have got to have the book.

Q. Is it correct, Mr. Mylott?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception. I offer that portion of the daily record of manufacture of the 21st station of the company's tests made at the Bowery and the City tests made at the Bowery in February, 1916, 1917, 1918 and 1919, and only that part of the book which shows those tests of those years and that month.

The Master: Is the 21st Street operating
44670 books in evidence?

Mr. Ransom: It is.

The Master: I shall rely on the statement of Judge Ransom that the book is in evidence.

Mr. Chambers: Who was that put in by?

Mr. Ransom: I haven't that book in Court. The book was ruled in evidence during the complainant's case.

Mr. Chambers: I don't know whether it is in or not.

The Master: I will rely on Judge Ransom's statement. I have no personal recollection, but

44671

relying on his statement that the book is in evidence I will sustain the objection.

Mr. Ransom: Mr. O'Brien made an offer, and subsequently I offered the remainder of the book, and your Honor ruled that the entire book had already been received.

The Master: It can be checked up before I file my report.

Mr. Chambers: I ask that these sheets be marked for identification that I am now offering.

Mr. Ransom: I object to their being marked for identification. It is an indirect way of doing 44672
what your Honor has ruled they may not do. They can put these exhibits for identification in and mark them for identification, and then they will claim that they are evidence, and they will want to print them. It is not surrebuttal by any stretch of the imagination, and I object to their being marked for identification. Anything like that does not belong in this record, because we have not had time to check these, we haven't seen them.

The Master: There is no necessity for looking at them; they are not in evidence.

Mr. Ransom: You are giving them a method of getting them printed.

44673

The Master: I don't know how much control I have over the printing of the record, but that is a matter that will have to be handled at the proper time.

Mr. Ransom: You haven't any, I am afraid.

The Master: Mark each batch, one batch for 59th Street and one for 21st Street.

Mr. Ransom: I further call attention to what they have done, they have picked out a few months.

44674

The Master: What is the use, Mr. Chambers, this case has got to be finished before I go to Cuba.

Mr. Chambers: I am just asking that these be marked for identification.

Mr. Ransom: They have just picked out a few months, they have not made a complete picture at all.

The Master: I have not looked at it, and I won't look at it. I will permit these to be marked for identification.

Mr. Ransom: You see, your Honor, what they
44675 are doing, they are getting up something of this sort at the last minute of the case. We have not seen it, we have had no opportunity to check it, we are not given copies of it, and your Honor is giving them a way of printing it in the record. The Court on appeal, of course, will not look at the book even though it is printed as a part of the record on appeal, they will look at these tabulations. I think it is a very unfair way and mean to be.

Mr. Chambers: I except to that.

Four sheets relating to 90th Street marked Defendants' Exhibit AA-522 for identification.

44676 One sheet relating to 21st Street station marked Defendants' Exhibit AA-523 for identification.

The Master: For the information of the Court reviewing the report of the Master, I desire to call special attention to the fact that I believe it would be highly unfair to the complainant to have these two exhibits just marked for identification printed in the record. If any matter of that kind is to be printed in the record I think the copies of the manufacturing record for all the months for all these years should be printed.

Mr. Chambers: I except to that.

Cross-examination by Mr. Ransom:

Q. Didn't you prepare similar tabulations for the other months of these different years?

Mr. Clark: I object to that.

Mr. Chambers: I object to it.

The Master: Objection overruled.

Mr. Clark: Exception.

Mr. Chambers: Exception.

A. Yes.

Q. You have those here?

A. I haven't got them.

The Master: Mr. Chambers had them in his 44678
hand?

The Witness: Yes.

Mr. Ransom: I thought we would show you up.

Mr. Chambers: Why don't you offer them in evidence?

Mr. Ransom: Because I know how they are gotten up.

By Mr. Chambers:

Q. Mr. Mylott, exactly what did you prepare?

A. I prepared candle power tests—

The Master: What did you copy from these books?

44679

Q. What months and what stations?

The Master: What items did you copy?

The Witness: I copied the candle power tests of the company and the City.

The Master: You copied the columns in the manufacturing books for what period, for all of 1916?

The Witness: Yes.

The Master: And 1917?

The Witness: Yes.

The Master: And 1918?

The Witness: Yes.

The Master: And 1919?

The Witness: Yes.

The Master: What columns did you copy?

The Witness: The columns under the heading, 79th Street, City tests, of the manufacturing books.

The Master: And the company's tests at the works?

The Witness: No.

The Master: Just the 79th Street sets by the company and by the City?

44681

The Witness: Yes, sir.

Mr. Chambers: I will offer them all in evidence.

Mr. Ransom: I object to them as not surrebuttal, incompetent and the books are the best evidence.

The Master: Objection sustained. The books are the best evidence.

Q. Is that all you prepared?

A. No. I prepared the same for the 21st Street station.

The Master: That is, you just copied the entries from the books?

44682

The Witness: Yes.

The Master: No calculations?

The Witness: No.

The Master: The objection is sustained.

Mr. Chambers: In view of what counsel said, that he would show me up, I offer them all in evidence.

Q. Look at these, is that all you prepared?

A. Yes.

Mr. Chambers: I have called your bluff. I didn't offer them all in evidence because I wanted

to save time. I wanted them all in evidence, but I only offered four as samples so as not to lumber up the record. I offer them all in evidence.

The Master: The objection to them is sustained. The same exhibit numbers that were placed on the few sheets of the 99th Street station will apply to all the 99th Street sheets; the same exhibit numbers for identification that were placed on the 21st Street sheets will apply to all the 21st Street sheets, and the stenographer will initial all the sheets that he has not already initialed.

44684

In reference to the balance of the sheets now offered in evidence, I think it would be unwise to have these sheets printed in the record unless they first be checked with the manufacturing books to make sure that they are correct copies in view of the fact that counsel for complainant has had no opportunity to look at them or check them at this time.

Mr. Chambers: Of course they are of no value unless they are exactly like the books.

Q. Mr. Mylott, you and Mr. Pyle took them off?

A. Yes, sir.

Mr. Chambers: Of course if there are any errors in them I consent that what the books show be substituted in place of these. 44685

The Master: Therefore the rule that I have indicated that the books themselves are the best evidence, illustrates itself.

Mr. Chambers: We cannot print the books all in evidence. We can photograph those pages, and I would just as soon have that done. If I had had time I would have done that. I except to the refusal to admit them in evidence.

44686

Now, I offer in evidence Table No. I heretofore offered—

The Master: What is that, a summary?

Mr. Chambers: Yes.

The Master: And only a summary?

Mr. Chambers: Cost of Book Appreciation of Land as Testified to in full by Mr. Maltbie. It was rejected because the Master was not making tabulations then.

The Master: I never did any such thing. Is this one of them that you did not have ready one day toward the end of the trial?

44687 Mr. Chambers: No, this is one I offered in evidence.

The Master: Is this what you offered as a summary?

Mr. Chambers: Yes.

The Master: What does it summarize?

Mr. Chambers: I offer it as a table of book costs.

The Master: Do you object to it?

Mr. Ransom: I do, decidedly.

The Master: Objection sustained. I will take any summaries you have.

Mr. Chambers: If the Master please, I think
44688 you are a little mixed. I say it respectfully. Let us get the record right, because I remember it and I don't think you do. Mr. Maltbie was on the stand, and he was testifying to the book cost as shown in Senate Document No. 47 of the property to the companies that were merged in the consolidation, and here it is. It is a tabulation or compilation from Senate Document 47, and the only reason that you did not take it then was that you said you were not taking tabulations or compilations. Since then you have modified the rule and said you will take these.

44689

The Master: I didn't say that, I said I would take any summaries

Mr. Chambers: That is what this is.

The Master: No, it is not.

Mr. Chambers: Yesterday you flared up because I objected on the ground that you would not take ours, and you said you would take them.

The Master: I won't take that one.

Mr. Chambers: I ask that it be marked for identification.

Mr. Ransom: Objected to.

The Master: I won't mark it.

44690

Mr. Chambers: Exception. The paper that I ask to be marked for identification is the paper described by Mr. Maltbie as Table No. 1, cost and book appreciation of land.

I now offer in evidence Table No. 2, as testified to by Mr. Maltbie, cost of land used and useful, being a tabulation.

The Master: I won't take it.

Mr. Chambers: Exception. I ask that it be marked for identification.

Mr. Ransom: I object.

The Master: Objection sustained.

44691

Mr. Chambers: Exception. The Master said he would take these yesterday, as I understood it.

I now offer in evidence Table No. 3, testified to by Mr. Maltbie, being additions to cost of land 1906 to 1918.

The Master: Same ruling.

Mr. Chambers: Exception. I ask that it be marked for identification.

Mr. Ransom: Objected to.

The Master: I won't do it.

Mr. Chambers: Exception.

The Master: None of these tables are summaries of your claim.

44692

Mr. Chambers: I respectfully dispute what the Master said and take an exception.

The Master: Well, they are not what I consider summaries of claims, what I intended to allow.

Mr. Chambers: They are the kind you allowed the complainant to put in yesterday. Exception.

I now offer in evidence Table No. 4 being retirement of land, 1906 to 1918, described by Mr. Maltbie, and rejected only because you were not taking tables and compilations then.

The Master: I won't take it.

44693 Mr. Chambers: Exception. I ask that it be marked for identification.

The Master: I won't do it.

Mr. Chambers: Exception. I offer in evidence Table No. 5 described by Mr. Maltbie as average cost of certain land, 1906 to 1918, as described by him when he testified.

The Master: I won't take it.

Mr. Chambers: Exception. I ask that it be marked for identification.

The Master: Denied.

Mr. Chambers: Exception. I offer in evidence Table No. 6, being table described by Mr Pyle, being Assessed Value of certain lands without improvements, 1906 to 1918.

44694

The Master: That I will take. It is a summary of evidence, of values testified to.

Mr. Ransom: It is not a summary of evidence. That is the reason your Honor excluded it.

The Master: I understand it is. Let me see it.

Mr. Ransom: There were things immediately pointed out about it that showed that it was not.

The Master: No, this is not the assessed values.

44695

Mr. Chambers: I don't know what you would call it.

The Master: You have apportioned it as to some lots.

Mr. Ransom: For which there was no basis in the record your Honor excluded it for that reason.

The Master: I won't take it as assessed values.

Mr. Chambers: It doesn't show apportionments, it is without improvements, just as testified to by the real estate expert. It is nothing but a table of the assessed values as testified to by the deputy tax commissioners.

44696

The Master: You took some of the assessed values and apportioned the assessed values.

Mr. Chambers: That is the way the tax commissioners apportioned them.

The Master: But they didn't say that was the assessed value.

Mr. Chambers: They applied their units.

The Master: But they didn't say it was the assessed value, it was not the assessed value.

Mr. Ransom: There were one or two instances here where there was nothing whatever to support it.

44697

The Master: I reverse what I said a few minutes ago, upon the ground that this is not a summary of the assessed values.

Mr. Chambers: I dispute the Master respectfully, and say it is. It is a tabulation of the testimony of the deputy tax commissioners.

Mr. Ransom: One of the assessors whose assessment is there shown as apportioned refused to do any such thing.

Mr. Chambers: Exception. I ask that it be marked for identification.

The Master: I decline to do that.

44698

Mr. Chambers: Exception. I now offer in evidence Table No. 7, testified to by Mr. Pyle, being assessed values of certain lands without improvements, 1906 to 1919, as testified to by the deputy tax commissioners.

The Master: Let me see that.

Mr. Chambers: Nothing was done by Mr. Pyle except to gather together the testimony—

The Master: It appears from an inspection of this Table No. 7, that it is not the assessed value of certain lands without improvements, and contains apportionments of assessed values. Therefore I will not take it.

44699

Mr. Chambers: I object to the Master's characterization, because it is incorrect, and take an exception. I ask that it be marked for identification.

The Master: I won't do that.

Mr. Chambers: Exception. I now offer in evidence Table No. 7-a, average assessed value of certain lands, 1906 to 1918, as testified to and compiled from Tables 6 and 7.

The Master: I won't take that, because it is not a mere summary.

Mr. Chambers: Exception. I ask that it be

44700

marked for identification.

The Master: I decline to do it.

Mr. Chambers: Exception.

The Master: If any of these documents are mere summaries from the testimony in the case, then summaries can be prepared as part of the briefs submitted to the Court. They are not required to be in evidence or marked for identification.

Mr. Chambers: I was only asking you to do what you did yesterday, and what you did for the other side. I was just asking you to give me exactly what you allowed Mr. Ransom to do.

44701

The Master: Anything else?

Mr. Clark: May I ask what is to be done about the questions put to Mr. Carter and postponed while he went to look them up?

The Master: What were they?

Mr. Clark: About property that was not withdrawn in the year that it was said to have been withdrawn in.

The Master: I will take care of that in a few minutes. Let us find out whether there is anything else. I won't close your surrebuttal until you get it.

Mr. Chambers: That is all I have right now. 44702

The Master: Have you anything else, Mr. O'Brien?

Mr. O'Brien: Your Honor, I have sent for Mr. Edgerton and he is on his way up here.

The Master: We will wait a while for him.

Mr. O'Brien: Meantime I have some testimony to read into the record.

The Master: From whom?

Mr. O'Brien: Reserving my right, and the rights of the defendants under objections already made.

The Master: Whose testimony do you want to read in? 44703

Mr. O'Brien: I want to get the cross-examination of Preiss, and Mayer and Simpson in the record, reserving my rights under the objections already made to the admissibility of the testimony.

The Master: That is all right.

Mr. O'Brien: Before proceeding with that however, I move that the testimony of the deceased Frederick J. Mayer, Colin C. Simpson and Mr. Preiss, Alfred Preiss, I think it is, which was read into the record in the case from the former trial, be stricken from the record.

44704

The Master: Motion denied. Now, of course, you are only going to try to read in cross-examination of the matter read in on rebuttal.

Mr. Ransom: The cross-examination of these witnesses on the direct was all read in.

The Master: I took in all of the testimony.

Mr. Ransom: Their testimony in direct on the prior case was all read in. I did not read in Mr. Mayer's and Mr. Simpson's testimony on cross-examination in rebuttal. The Master said you could read that if you wanted to.

Mr. O'Brien: Before doing that I make the mo-

44705

tion, and I assume that you will render some decision at this time, having in mind that you have stated several times that you thought you would throw it out.

The Master: No, you can read in your cross-examination.

Mr O'Brien: Is your Honor prepared at this time to say what disposition you are going to make of the testimony?

The Master: No.

Mr. O'Brien: Of course we would not put Mr. Edgerton on to clear up a few points if your Honor is going to throw the whole thing out any-

44706

way.

The Master: No, you had better put it in.

Mr. O'Brien: Do you think at this time you will leave it in the record?

The Master: Yes, at this time.

Mr. O'Brien: Of course we have been influenced by your Honor's oft expressed mind that you would finally throw it out.

The Master: I never said I would. If you want to read in the cross, read it in. You don't have to excuse yourself.

44707

Mr. O'Brien: I am not excusing myself. Your Honor has made statements from time to time in reference to the testimony of these three dead men that you were going to throw it out anyway.

The Master: No, I never said that. I said I could not see where it was useful in this case in which I am required to fix the value as of 1918 or 1919. I have not reached any conclusion on it, and I still do not see that it helps me arrive at that value. If it does, I will consider it. Now, read in your cross if you want to.

Mr. O'Brien: I proceed to read this cross, but only on the theory that your Honor's ruling, if 44708
affirmed, if agreed to by the higher courts, would leave the testimony in there without the cross-examination on rebuttal.

The Master: Well, if I were you, I would not permit the record to stand without having that cross-examination in.

Mr. O'Brien: I do not waive our rights, and we do not change our position. I do not see the propriety of allowing any of it in the record, and if the Court is going to rule it out, then—

The Master: I don't believe that by cross-examining a witness you waive the objection you have made to any testimony on direct. Where the 44709
testimony is allowed in I think you are bound to cross-examine.

Mr. Chambers: I want to say that I do not waive any of the rights of the defendant that I represent by the reading of the testimony of the dead witnesses on cross, because I claim and will claim hereafter that the entire testimony of these dead witnesses is incompetent, irrelevant and immaterial and improper in the case, for all the reasons urged when offered.

Mr. Ransom: It is not surrebuttal anyway.

44710

The Master: Why?

Mr. Ransom: I read in my rebuttal the testimony of Mayer and Simpson on certain points. There was certain cross-examination, let us assume, on those points. It does not become surrebuttal after the rebuttal is closed, to read in cross-examination on rebuttal.

The Master: Well, it might have been better, strictly, to have read in the cross-examination when you were through reading the direct on rebuttal, but I will take it at this time.

Mr. Ransom: Exception.

44711

The Master: I think that is drawing the line a little bit too fine.

Mr. Clark: The rebuttal is not strictly closed anyway, is it?

Mr. Ransom: I shall not urge the point.

The Master: Are there any other parts of that testimony that you want to read? Do you want to read all the balance of the testimony of Mayer and Simpson given on rebuttal that has not been read by Mr. Ransom? And the witness Preiss?

Mr. Ransom: I did not read the testimony of Preiss.

Mr. O'Brien: No, I am going to read the cross-

44712

examination on rebuttal.

Mr. Goetz: The cross was the part which was excluded.

Mr. O'Brien: If I had had the time to go over the record of last week where that was read, and to get together in an orderly way—

The Master: Judge Ransom, have you any objection to reading in evidence here all of the rebuttal testimony given by Mayer and Simpson, to save time?

Mr. Ransom: No.

44713

The Master: No objection?

Mr. Ransom: No objection.

Mr. O'Brien: But, your Honor, it was objected to on the ground that a good deal of it was not rebuttal, that it embraced certain matters, and I think you ruled with us on that.

The Master: Do you still press that?

Mr. O'Brien: Why, I have got to press the objection.

The Master: Then how can I take it all in?

Mr. O'Brien: Because they are in a dilemma on this. The point is this, they can't read it all in because some of it is inadmissible, and they 44714
can't read some of it because some of it is not admissible if the whole is inadmissible.

The Master: I will handle the situation this way: I am going to reverse the ruling I made before and take into evidence in this case, and have the stenographer write into the record, all of the testimony given by Mayer and Simpson on rebuttal in the prior case, including direct and cross, or in any other form on rebuttal. I am not going to permit counsel to take an advantage of an objection of that kind because the strict rules of evidence that matter on rebuttal ought to have been put in on direct. I am going to take 44715
it all in. Counsel will point out in the Supreme Court record or the Circuit Court record the pages upon which the rebuttal testimony appears, and the stenographer will copy it all in.

Mr. O'Brien: I would have to read that, so we could make objections to it as we go along.

The Master: No.

Mr. O'Brien: Special objections must be made to the testimony.

The Master: No.

44716

Mr. O'Brien: But your Honor is not going to take it right into this record?

The Master: Yes.

Mr. O'Brien: Without our special objections as we go along?

The Master: In view of the statement made by counsel for defendant Swann that the only proper method of taking the testimony of the dead witnesses is to take all of it, I am going to take it all.

Mr. O'Brien: I say you cannot take part of it without the context. You cannot take all of the testimony because there are certain special ob-

44717 jections that lie to portions of it, and the only way you can handle that is to pass upon our objections as we make them. Such parts as are not admissible must be excised, some of it, because it is not strictly rebuttal, some of it because the law has been changed since these men have passed to their last resting place.

The Master: I made my ruling.

Mr. Clark: Exception.

Mr. O'Brien: Exception.

The Master: All the testimony given by Mayer and Simpson on rebuttal will be read into the record, both direct and cross. As I understand

44718 it, all of the testimony which was given by Mayer and Simpson, by my ruling, I understand it that all of the testimony given by Simpson and Mayer in the previous case of Willcox vs. Consolidated Gas Company in the United States Supreme Court will be in this record.

Mr. Ransom: For determination by your Honor as to its materiality and relevancy eventually?

The Master: Yes.

Mr. O'Brien: I except to the ruling of the Court.

44719

Mr. Clark: I suppose the complainant waives objection to any questions asked on cross-examination?

The Master: The complainant has nothing to say about it under the circumstances, it is all read in.

Mr. O'Brien: I do not intend to be bound by some silence on the part of counsel for the defendant in the old case. If there is something that appears to me to be now objectionable I want the privilege of making a special objection to that testimony. I want to use my own judgment as to the questions as they go along, whether I am 44720
going to object to them or not. We have to coordinate this, we have to adapt the testimony as we see fit in our judgment to the situation that has been created by the testimony already in this case.

The Master: Either Mr. O'Brien is right in the position that he takes that part of it cannot be read without reading it all, or he is right in the proposition that part of it can be read, and a part excluded on objection. In order to avoid any question on it, I am going to take it in so there may not be any trouble about it, so that if any part is not properly material or relevant in this 44721
case, it can be stricken out on motion when we come to the motions to strike out; but it will be in the record, and when I strike it out, if I do strike it out, it will be understood that it is not considered by the Master.

Mr. Goetz: The pages on which the testimony occurs are as follows:

Colin C. Simpson, Circuit Court record, page 5417; United States Supreme Court record, page 3860

Colin C. Simpson, page 5894 of the Circuit Court record; page 4171 of the Supreme Court record.

Frederick J. Mayer, page 6564 of the Circuit Court record; page 4584 of the Supreme Court record.

The exhibits are in the subsequent volume.

Mr. Chambers: I object to it for the reasons urged at the time they read the other testimony.

The Master: Objection overruled.

Mr. Chambers: Exception.

44723 Mr. O'Brien: I renew my objections as previously expressed when the same thing was first offered, and when rebuttal was read, on the same grounds, and the additional grounds urged today.

The Master: Objection overruled.

Mr. O'Brien: Exception.

COLIN C. SIMPSON, recalled in rebuttal on behalf of complainant.

DIRECT-EXAMINATION by Mr. Mathewson:

44724 Q. You have testified before in this case, have you?

A. I have.

Q. Will you not at the outset state somewhat more at length than you have heretofore, your experience in the business of laying gas mains, and your knowledge of the condition of sub-surface structures in New York City?

Mr. Page: I think he has testified very fully.

Mr. Mathewson: I do not think he has testified quite so fully as he can.

A. May I read this right off (indicating paper)?

Q. If that is what you want to say, yes.

44725

A. I have made a speciality of the business of main and service laying for twenty-eight years (four years in Vienna, Austria, laying water mains and twenty-four years in Manhattan). Have personally watched the exposing of approximately 90 per cent of the Consolidated, New Amsterdam, Mutual and Standard mains. Have supervised the laying of the greater part of the Consolidated Gas Company's mains. Also watched the laying of practically all the New Amsterdam and Standard mains, and about 30 per cent of those of the Mutual. I have watched the building of underground telephone and electric light subways from 44726
their inception. I have also watched the laying of all large water mains—30-inch, 36-inch and 48-inch—since 1889. And the building from start to finish of the Rapid Transit Subway. I have kept records of all mains laid by other gas companies for the last seventeen years. I have watched the laying of all mail tubes and the construction of the cable and underground trolly systems of all surface railroads, also the excavations for the Pennsylvania and the New York Central Terminals.

I designed and had laid under my personal supervision the 48-inch gas main on Avenue A, between Sixty-second and Seventy-first Streets, New York 44727
City, which (with the exception of the 60-inch gas main in Long Island City) is the largest gas main in this country today; and in conjunction with our Chief Engineer, Mr. William H. Bradley, designed the 60-inch gas main in Long Island City, from our new Astoria plant to the tunnel crossing the East River under Blackwell's Island and personally supervised the laying of same. This 60-inch main is three miles long, is the largest gas main in the world today, and is now being successfully operated. This main was laid under extreme conditions; many of the streets

through which it passed were not even graded, necessitating in some places going down to depth of twenty-five feet, and in other places making "fills" of from ten to fifteen feet high. At Broadway and Van Alst Avenue it was necessary to go under a large trunk sewer—

Mr. Page: I suppose all those mains laid over in Long Island—

Mr. Mathewson: He is showing his experience.

Mr. Burr: Yes, and he has made statements as
44729 to the operations of the mains meanwhile. He says it is not being successfully operated, and I think that is hardly rebuttal. It is something we will have to find out about still more.

The Master: He may proceed.

The Witness: (Continuing) at Broadway and Van Alst Avenue it was necessary to go under a large trunk sewer, and we here reached a depth of 28 feet and had to contend with tide water and a live underground stream. In crossing Sunwick Creek it was necessary to provide large culverts to take care of the tidal flow of the creek.

There has not been a single sub-surface struc-
44730 ture of any consequence constructed on the Island of Manhattan during the last seventeen years which has not necessitated my rigid inspection, as there are probably no streets in Manhattan which do not contain at least one gas main, and to protect these it is necessary for us to most carefully watch all underground work.

In fact, I can assert that I have a better general knowledge of sub-surface conditions in Manhattan than any other one person.

Q. Are the estimates which you have made and which you are producing today based upon theorizing,

or are they based upon your own absolute knowledge and experience?

A. My absolute knowledge and experience and from actual data of cost that I kept.

Q. Now, I understand, Mr. Simpson, from your previous testimony that the mileage of the mains of the Consolidated Gas Company, the details of sizes, is kept in the books of the Consolidated Gas Company?

A. Yes, sir.

Q. I don't mean the maps, of course, but the books and records? 44732

A. The books.

Q. And whenever any main is laid, has your department a record of that laying, including the length of the main and the size and so forth?

A. Yes, sir.

Q. And does it report them to the Accounting Department after laying that main?

A. Yes, sir.

Q. How often?

A. Once a month.

Q. And those reports are then entered in the Accountant Department, are they?

A. They are. 44733

Q. From the original records which you used on it and sent up?

A. No; they are entered in the original record in my department, and the data is given to the accounting department from my record.

Q. You say that since the formation of the company you have been over and seen at least 90 per cent of the present main mileage of the company. Have you ever found an instance where the main, as disclosed on the records of the company, was not found in the street when you came to uncover that place?

A. Never; not in any one single case.

Q. And is it your judgment, therefor, that the records of the company are correct as to mains?

A. It is, sir.

Q. Have you ever had any report from any of your superintendents or any men employed by you that any main which appeared on the records of the company was not found when they were uncovering the street for the purpose?

A. Never.

Q. Where is the distance of the main from the curb
44735 recorded on the maps or in the records of the company?

A. On the books of the company, not on the maps.

Q. It does not appear on the maps, does it?

A. Doesn't appear there at all.

Q. How about the depth and the exact measurements between given points?

A. All on the books, not on the maps at all.

Q. None on the maps?

A. No, sir.

Q. How and when are mains placed on the maps?

A. Well, as soon as reports are received they are placed on the books, and as soon as placed on the books
44736 they are put on the maps.

Q. Are they put on the maps from the records of the company, or are the records of the company made up from the maps?

A. No; they are put on the maps from the records of the company?

Q. So that as between the maps and the records of the company, if there was a divergence, which would be correct?

A. The books would be correct.

Q. Now, when you send up to the accounting department a record of a main, do you give any detail of

do you have any detail as to its length and the bounds, and as to those used and that are not used and all that?

A. Yes, sir.

Q. And are those records kept?

A. Yes, sir.

Q. And is it possible for a main to get on the books of the company that is not actually laid?

A. Absolutely impossible.

Q. Now, in case of a fire or other accident, where would you go to get the detail of the main as to distance from the curb, the exact length, the depth, etc? 44738

A. To the books.

Q. Not on the maps?

A. I would go to the maps first to see what size main was on that side of the street, and then I would go to the books to find the location of it, distance from the curb, depth etc.

Q. What use, then, do you make of maps such as the company keeps and such as were examined by Mr. Marks?

A. They are used for ready reference as to what size of mains are on certain streets and what side of the street they are on; only for that.

Q. Reference was made to your testimony in this case where you stated that the maps were correct, or you believed the maps to be correct. Do you remember your testimony in that regard? 44739

A. I remember being asked if the maps were correct, and I said yes.

Q. Will you explain a little further to what extent you intended to be understood?

A. Well, I mean to say that they are correct. I did not see anything incorrect about them. I do not say they were drawn to scale or anything of that kind, but they were correct in so far as any mains that are

in the ground are concerned, and there is nothing on those maps that does not belong there.

Q. And that was the extent of your meaning when you made that statement, wasn't it?

A. Yes, sir.

Mr. Burr: I hardly think that that is proper rebuttal, to have him qualify now, at this late date, a positive statement which he made in the beginning of this inquiry and upon which we relied and upon which we based our application for an examination of those maps, relying upon
44741 the truthfulness of the statement which he made as early as page 339 of the record.

Mr. Mathewson: Oh, you made your examination after he stated and I stated over and over again, in reference to these maps, just what he is now testifying to.

Mr. Page: The State did not rely upon the accuracy of any of the statements of Mr. Simpson.

Mr. Mathewson: They are quite accurate.

The Master: Proceed, gentlemen.

Q. Do you wish in any way to modify or qualify the previous statement that there were eight hundred
44742 and twenty-two miles of mains at the time you testified?

A. No, sir.

Q. Now, let us refer to the maps which Dr. Marks examined. The maps on which the company keeps its mains indicated are ordinary insurance maps, are they not?

A. Insurance volumes, yes, sir.

Q. And do they have a scale indicated on the map?

A. They are supposed to be drawn to scale.

Q. Have you examined the maps to see whether they agree with their own scale?

44743

A. I have.

Q. Do they agree with their scale?

A. No, sir.

Q. Did you find in any instance that they agreed with your scale, where you measured?

A. No, sir; not in a single instance.

Q. Was the actual distance longer than it showed on the map or shorter?

A. Shorter in every case.

Q. You mean the map showed a shorter distance than the actual distance?

A. Than the official measurements. 44744

Q. So that their measurement would show less mains than actually existed?

A. Yes.

Q. Now, have you examined these schedules and charts as presented by Mr. Marks, beginning with City's Exhibit 92, and from there continuing down to City's Exhibit 103, and perhaps there may have been other numbers that I have not mentioned, but I refer to all these schedules?

A. I have gone over them, yes, sir.

Q. Gone over parts of them?

A. Yes, sir.

Q. Will you state whether you found inaccuracies 44745
in those schedules, and if so, state in detail the character of the inaccuracies.

A. Why, the inaccuracies are so many that if I am allowed I will have to read them off, they are so many. In the first place, as before stated, the maps do not agree with the scale given. In every instance observed by me they are shorter than the official lengths. All the mains on five complete maps, Nos. 118, 119, 120, 121, 122 of Volume 6, have been entirely omitted.

In taking some of the volumes and comparing pages at random, there are numerous mains on the maps which do not appear at all on Prof. Marks' exhibits.

There are also numerous cases where the lengths, as given by Prof. Marks, are shorter than actually shown, on the maps measured, even measuring on the maps themselves, according to their own scale.

There are also a number of instances where the sizes, as given by Prof. Marks, are incorrect; a 30 inch main is stated where it should be 36 inches; 3-inch main is stated where it should be 6-inch, 4-inch main given
44747 where it should be 8-inch, etc., etc., etc., the error in every case being against the company.

As the mains are not placed upon the maps to scale, this would affect the measurements given at every point where the main ends at its connection with the traverse main, because of the varying distances from the curb. In most every instance the mains are at a greater distance from the curb than would be indicated by the map. In considering the total number of such cases, the actual increase in length over that scaled would be an appreciable item.

In addition to the errors above noted, numerous mistakes may be found in the exhibits themselves; of
44748 which the following are instances:

Mains entered on the detailed sheets, but entirely omitted from the summary sheet and, therefore, not included in the addition, or in the figures appearing on page 4605 of the present testimony.

Mains appearing on the summary sheets from 50 to 1,000 feet short of their lengths as given on the detailed sheets.

Mains appearing in a column of the summary sheets which have not been totaled and, therefore, not included in the figures appearing on page 4605.

Mains appearing on the detailed sheets under a

certain size, but appearing on the summary sheets under the heading of a smaller size.

Mains appearing on the detailed sheet as disused, when the main described is shown on the map as in use, and should be included with the active main.

Cases when the active and disused totals appear on the detailed sheet, but the disused has been transferred to the summary sheet and added in with the active main, while the correct length of active main in each case much greater than the disused, has been left out entirely.

Discrepancies between the summary totals and the 44750
totals given on page 4605 of the testimony—amounting to 20,129.6 feet, against the company.

Q. That is something like four miles in that instance?

A. Yes, sir.

Q. Does there appear, as far as you can observe, any possible kind of error which could have been made which has not been made?

Objection.

The Master: I think that is hardly allowable, Mr. Mathewson.

Q. Now, referring to these various classes of errors and discrepancies, did you find any instance in which 44751
the errors and discrepancies were not against the interests of the company?

A. Not one single instance.

Q. Now, let us take the first instance. You say in every instance observed by you the lengths shown on the map are shorter than the official lengths?

A. Yes, sir.

Q. Where did you get the official lengths?

A. From the official card of the city, giving street widths and block measurements.

Q. This is data of the City of New York?

A. Yes, sir.

Q. Have you a schedule showing some instances according to your measurement where the distance is shorter than the official length?

A. Yes, sir.

Q. Is this paper which you produce such a statement?

A. Yes, sir. It is as follows:

MEASUREMENTS OF DISTANCES IN INSURANCE VOLUMES.
Taken by Mr. C. C. Simpson.

From	To	Official length	Volume Scales	Volume is short
S. P. line, 145th Street	N. P. line, 150th Street	1399 ft. 2 in.	1394 ft. 0 in.	5 ft. 2 in.
W. P. line, 5th Avenue	E. P. line, Lenox Avenue	895 ft. 0 in.	890 ft. 0 in.	5 ft. 0 in.
N. P. line, 110th Street	S. P. line, 105th Street	1449 ft. 2 in.	1403 ft. 0 in.	46 ft. 6 in.
N. P. line, 81st Street	S. P. line, 76th Street	1421 ft. 8 in.	1405 ft. 0 in.	16 ft. 8 in.
N. P. line, 109th Street	S. P. line, 105th Street	1147 ft. 4 in.	1135 ft. 0 in.	12 ft. 4 in.
N. P. line, 115th Street	S. P. line, 110th Street	1409 ft. 2 in.	1362 ft. 0 in.	47 ft. 2 in.
E. P. line, 2nd Avenue	W. P. line, 3rd Avenue	810 ft. 0 in.	786 ft. 0 in.	24 ft. 0 in.
E. P. line, 2nd Avenue	E. P. line, 1st Avenue	750 ft. 0 in.	729 ft. 0 in.	21 ft. 0 in.
N. P. line, 100th Street	C. P. line, 96th Street	1145 ft. 8 in.	1130 ft. 0 in.	15 ft. 8 in.
S. P. line, 115th Street	N. P. line, 120th Street	1409 ft. 2 in.	1383 ft. 0 in.	26 ft. 2 in.
W. P. line, 2nd Avenue	E. P. line, 1st Avenue	850 ft. 0 in.	845 ft. 0 in.	5 ft. 0 in.
W. P. line, 1st Avenue	E. P. line, Avenue A	813 ft. 0 in.	785 ft. 0 in.	28 ft. 0 in.

Mr. Page: I think it would be well probably if we should just have one or two of those volumes brought down and a demonstration given that they are shorter.

Mr. Mathewson: Very good. It can be done without any difficulty. Will you go ahead, Mr. Simpson.

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SURANCE VOLUMES.

	d length	Volume Scales	Volume is short
	ft. 2 in.	1394 ft. 0 in.	5 ft. 2 in.
	ft. 0 in.	890 ft. 0 in.	5 ft. 0 in.
	ft. 2 in.	1403 ft. 0 in.	46 ft. 6 in.
	ft. 8 in.	1405 ft. 0 in.	16 ft. 8 in.
	ft. 4 in.	1135 ft. 0 in.	12 ft. 4 in.
	ft. 2 in.	1362 ft. 0 in.	47 ft. 2 in.
	ft. 0 in.	786 ft. 0 in.	24 ft. 0 in.
	ft. 0 in.	729 ft. 0 in.	21 ft. 0 in.
	ft. 8 in.	1130 ft. 0 in.	15 ft. 8 in.
	ft. 2 in.	1383 ft. 0 in.	26 ft. 2 in.
	ft. 0 in.	845 ft. 0 in.	5 ft. 0 in.
	ft. 0 in.	785 ft. 0 in.	28 ft. 0 in.

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44755

The Witness: Now, I may say that in each case in here, of course, the entire page is wrong; because, you understand, these things are all straight lines, and if I take one avenue and that avenue is short all the rest of the avenues are short, too, and I have only taken here what I actually scaled myself.

By Mr. Page:

Q. When you referred a moment ago to the "official card of the City," that was a card issued by what or whom?

A. By the Bureau of Highways.

44756

By Mr. Mathewson:

Q. Now, you have stated that all the mains on five complete maps, Nos. 118 to 122 of Volume 6 have been entirely omitted?

A. Yes, sir.

Q. Have you a statement of those mains, the detail?

A. I have, sir; the sizes and number of feet.

Q. Now, will you please state that?

A. The mains on maps Nos. 118, 119, 120, 121 and 122 do not appear in Prof. Marks' exhibits.

These mains, by actual street distances, are as follows:

44757

3-inch	840 feet
4-inch	23,918 feet
6-inch	53,733 feet
8-inch	18,187 feet
10-inch	3,331 feet
12-inch	8,413 feet
16-inch	2,631 feet
20-inch	6,238 feet
24-inch	560 feet
30-inch	10,200 feet
Total	128,051 feet
	or 24.25 miles.

44758 Colin C. Simpson, Direct.

Q. Now, you estimate that the total sum of pipe by Mr. Marks, excluding abandoned mains, was about 780 miles, against 822, or 41 miles difference?

A. Yes, sir.

Q. And this would account for about twenty-four or twenty-five miles at one jump, wouldn't it?

A. Yes, sir; or more than half of it.

Q. You say in checking some of the volumes and comparing at random there are numerous other mains on the maps which do not appear at all on Professor Marks' exhibit. That is outside of these five pages,

44759 isn't it?

A. Yes, sir.

Q. Have you a schedule of such omissions?

A. Yes, sir.

Q. So far as you have examined the schedules?

A. Yes, sir.

Q. Will you state that for the record?

A. I have not all of them. I have a statement of some of them.

Q. Yes, I mean a statement of some of them, as an example.

A. Shall I state volume number and map number, or just the street and "from" and "to" and "where"?

44760 Q. Well, the street, from to or where will do for me, unless counsel for the other side want the volume.

Mr. Burr: I would rather have the volume, in addition.

Q. Have you it all on this statement?

A. Yes, sir, it is as follows:

SOME MAINS OMITTED FROM

Volume No.	Map No.	Street or Avenue	Side	From	Side
4	77	39th Street	South	Park Avenue	E.
4	77	41st Street	South	Lexington Avenue	E.
4	83	49th Street	North	Lexington Avenue	E.
4	83	49th Street	South	Park Avenue	E.
6	105	Broadway	East	52nd Street	C. L.
6	109	Avenue A	East	63rd Street	C. L.
7	142	115th Street	North	Broadway	W.
8	155	76th Street	North	Fifth Avenue	E.
8	155	76th Street	North	Third Avenue	W.
8	156	78th Street	North	Fifth Avenue	E.
8	157	86th Street	South	Fifth Avenue	E.
8	159	Avenue A	West	77th Street	N.
8	160	85th Street	South	First Avenue	C. L.

Total

EXHIBITS.

Map Shows by Scale

Side	No. of Feet	Size Main		
W.	417	6 in.	01	
W.	461	6 in.	02	
W.	468	6 in.	03	
W.	1,206	10 in.	04	
N.	1,400	6 in.	05	
C. L.	1,569	12 in.	06	44762
E.	555	6 in.	07	
W.	935	6 in.	08	
	102	4 in.	09	
	430	6 in.	010	
W.	60	4 in.	011	
W.	468	6 in.	012	
	35	3 in.	013	
	432	4 in.	014	
	938	6 in.	015	
W	450	4 in.	016	
S.	494	6 in.	017	
W.	681	6 in.	018	
	11,110 Feet			44763
	or			
	2.10 Miles			

Q. This sample which you have presented shows a total of 11,110 feet, or something over two miles?

A. 2.10 miles.

Q. Is it the fact that entire blocks were left out of the mains?

A. Yes, sir, not entire blocks only, but in some cases the entire width of the page, for instance, such as 1,200 feet, 1,400 feet, 1,569 feet.

Q. Now, you say there are also numerous cases where the length is given by Professor Marks as shorter than actually shown on the maps, even if
44765 measured by their own scale?

A. Yes, sir.

Q. Have you illustrations of these errors that you have discovered?

Mr. Burr: Of course, I expect to be furnished with copies of these statements for the purpose of enabling me to cross-examine.

Mr. Mathewson: You shall have them before I get through, before they are printed; and you can proceed with your cross-examination from them right here.

Q. Will you present this for the record?

A. Yes, sir. It is as follows:

44766

IBITS:

Difference Feet	Map Reference		
79.11	D 1		
66.94	D 2		
.93	D 3		
694.49	D 4		
68.06	D 5		
28.51	D 6		
67.06	D 7		
70.06	D 8	44768	447
70.06	D 9		
80.03	D 10		
70.06	D 11		
80.03	D 12		
141.74	D 13		
12.20	D 14		
27.10	D 15		
22.75	D 16		
27.10	D 17		
15.10	D 18		
404.25	D 19		
23.94	D 20	44769	447
133.39	D 21		
58.78	D 22		
20.72	D 23		
26.24	D 24		
1684.82	D 25		
132.86	D 26		
69.52	D 27		
69.52	D 28		
394.59	D 29		
651.27	D 30		
316.80	D 31		
	D 32		
550.46	D 33	?	
8.25	D 34		
6166.90			

44779

Q. All these errors here and those to which I have previously called your attention appear on the face of the maps themselves?

A. They do, sir.

Q. The dimensions of the mains here appear on the map correctly?

A. Yes, sir.

Q. They have been incorrectly taken off by Mr. Marks?

A. Yes, sir.

Q. Have you also prepared a table illustrating some of the other errors to which you have testified as differences between the detailed schedules and the summary sheets of Professor Marks' exhibits?

44780

A. Yes, sir.

Q. And mains appearing on the detailed schedule have been omitted from the summary sheets?

A. Yes, sir.

Q. And mains appearing in detail of a certain size have been put down on the summary sheet under a smaller size?

A. Yes, sir.

Q. And mains appearing on detail schedules as disused where the mains described is shown on the map as being in use?

44781

A. Yes, sir.

Q. And mains appearing in a column of the summary sheet which has not been totaled, and therefore not included in the totals given on page 4605?

A. Yes, sir.

Q. Is this the result of the examination of the entire number of schedules, or merely an illustration?

A. Merely illustrations all the way through. We have not gone through the whole thing.

Q. Do you desire to spread that on the record as an illustration of those discrepancies?

A. Yes, sir. The illustration is as follows:

44782

SOME OF THE DISCREPANCIES EXISTING BETWEEN THE DETAILED SCHEDULES AND THE SUMMARY SHEETS OF PROF. MARKS' EXHIBITS.

(Errors in Length)

	Vol. No.	Map No.	Schedule No.	Schedule Gives		Summary Gives		Error-Against Company
	1	8	10	71.41 ft.	3 in.	21.41 ft.	3 in.	50.00 ft.
	8	162	143	4693.43	4	4593.43	4	100.00
	6	112	111	1771.00	4	1271.00	4	500.00
44783	6	113	112	1796.25	6	1716.25	6	80.00
	6	114	112	6730.10	6	6530.10	6	200.00
	8	173	156	5048.50	4	4048.50	4	1000.00
								1930.00 ft.

MAINS APPEARING ON DETAIL SCHEDULES BUT OMITTED FROM SUMMARY SHEETS.

	Vol. No.	Map No.	Schedule No.	Schedule Gives		Summary Gives	
44784	1	21	27	862.50 ft.	20 in.	.....	862.50 ft.
	4	73	78	1588.81	30	.....	1588.81
	7	144	127	1333.33	20	.....	1333.33
	7	147	129	1128.46	8	.....	1128.46
	6	114	114	1331.25	10	.....	1331.25
							6244.35 ft.

MAINS APPEARING ON DETAIL SCHEDULES AS A CERTAIN SIZE, BUT SHOWN ON THE SUMMARY SHEET UNDER A SMALLER SIZE.

Vol. No.	Map No.	Schedule No.	Schedule Length ft.	Gives Sizes in.	Summary Length ft	Gives Size in.
1	13	17	375	24	375	20
3	36	68	575	20	575	18
7	(142 1 2-143)	126	1310.28	16	1310.28	12
11	240	163	1302.07	30	1302.07	24

MAINS APPEARING ON DETAIL SCHEDULES AS DISUSED WHERE THE MAIN DESCRIBED IS SHOWN ON THE MAP AS BEING IN USE.

Vol. No.	Map No.	Schedule No.	Schedule	Gives	
7	132	120	1316.25 ft.	20 in. disused	1316.25 ft.

44788

MAINS APPEARING IN A COLUMN OF THE SUMMARY SHEET WHICH HAVE NOT BEEN TOTALED AND THEREFORE NOT INCLUDED IN THE TOTALS GIVEN ON P. 4605.

Entries on Summary Sheet not Included in the Total Amount to

Summary Sheet No.	Length	Size	Error-Against Company
7A.	5975.66 ft.	10 in.	5975.66 ft.

44789

Volume No.	Schedule No.
7	125

The entries credited to Map 142 on the Summary Sheet, should really be credited to Map 141, as proved by checking from the Detail Schedule. The mains appearing on the Detail Schedule —and belonging to Map 142 do not appear on the Summary at all. This is an error against the Company of:

356.63	ft.	of 6	in.
1742.40	ft.	" 8	in.
44790 50.51	ft.	" 12	in.
1352.98	ft.	" 30	in.
6715.52	ft.		6715.52 ft

Volume No.	Map No.	Schedule No.
4	77	82

The active 4-inch main is entered but not totaled on the detailed schedule. It amounts to 2,087 feet (about).

The 4-inch disused main is 987.86 ft. and this is shown on the summary sheet as active 1,097.14 ft.

Volume No.	Map No.	Schedule No.
5	90	92

The active 3-inch main appears on the detailed schedule as 1135.49 ft. and the disused 3-inch main as 769.80 ft. The disused length is shown on the summary as the active main 367.69 ft.

The main mileage given on page 4605 of the testimony, does not agree with the totals as taken from the summary sheets, as shown by the following table:

Size of Main	Total length as given in Testimony, p. 4604	Total length as taken from the Summary Sheets and added	Difference	
2 inch	3,969.60	3,969.60		
3 "	138,057.22	138,057.24	.02	
4 "	477,561.87	478,601.87	1,040.00	
5 "	430.27	430.27		
6 "	1,945,509.85	1,957,798.85	12,289.00	
8 "	468,847.20	468,832.15		+15.05
10 "	69,635.34	69,859.68	224.34	
12 "	305,248.17	305,248.17		
16 "	82,094.15	82,869.15	775.00	
18 "	32,771.97	33,834.72	1,062.75	
20 "	143,368.16	147,202.60	3,834.44	
24 "	35,391.73	36,279.88	888.15	
30 "	140,233.42	140,233.42		
36 "	19,163.95	19,163.95		
			20,113.70	
		less	15.05	20,098.65

Total error against the Company in the above noted cases 43,745.26 ft.

Q. And the errors shown on this sheet, which you have just presented, amount in total, do they not, to 43,745.26 feet, or something like eight miles, isn't it, or a little over?

A. Yes, sir; 43,745.26 feet.

Q. Now, you have another table haven't you, relating to this subject?

A. Yes.

Q. Will you state what it is? What is this first table you have before you?

A. It is a summary of the errors made by Mr.
44795 Marks in giving the length of the mains.

Q. As to the mains, so far as you examined?

A. Yes, sir.

By the Master:

Q. You mean a recapitulation of the statements already made here?

A. Yes, sir. The summary is as follows:

44796

The mains, active and disused, as given by Mr. Simpson, at Oct. 31st, 1905, amount to a total of			4,344,849.00
Mains scaled from Maps by Prof. Marks.			
Active	3,862,282.90		
Adding disused at Oct. 31st, 1905	147,158.00		
		4,009,440.90	
Adding for			
Maps 118, 119, 120, 121, 122—five in all-not scaled by Prof. Marks (see sheet)		128,051.00	
Some of the mains omitted from Prof. Mark's exhibits (see sheet)		11,110.00	
Some of the mains incorrectly scaled by Prof. Marks (see sheet)		6,166.90	
Prof. Marks allows for the Bronx (see page 4605)		29,111.00	
Some of the errors noted in comparing the detail schedules with summary sheets (see list)		43,745.26	
			4,227,625.06
Leaving, according to Prof. Marks' statement, and not including other uncorrected errors, a difference of which is equal only to 2.69 per cent			117,223.94

Q. You now produce another sheet?
A. Yes, sir. It is as follows:

The mains, active and disused, as given by Mr. Simpson, at Oct. 31st, 1905, amount to a total of			4,344,849.00
Mains scaled from Maps by Prof. Marks.			
Active	3,862,282.90		
Disused	230,630.40		
		4,092,913.30	
Adding for			
Maps, 118, 119, 120, 121, 122 (the pages omitted) 5 in all, not scaled by Prof. Marks (see sheet)		128,051.00	
Some of the mains omitted from Prof. Mark's exhibits (see sheet)		11,110.00	
Some of the mains incorrectly scaled by Prof. Marks (see sheet)		6,166.90	
Prof. Marks allows for the Bronx (see page 4605)		29,111.00	
(Prof. Marks' total did not include the Bronx mains, which are nearly six miles.)			
Some of the errors noted in comparing the detail schedules with summary sheet (see list)		43,745.26	
			4,311,097.46
Leaving, according to Prof. Marks' statement and not including other uncorrected errors, a difference of which is equal to only 77 100 of 1 per cent.			33,751.54

Q. How does that differ from the table which has been placed on the record just before this last one?

A. On this second sheet in place of the 230,630.04 feet of disused mains, I have taken only the disused mains that we are carrying on our books, amounting to 147,158.00.

Q. That is to say, in place of the disused mains given by Professor Marks, you have reduced that to the amount of disused mains we actually have on our books?

A. Yes. That brings the difference down to 117,223.94 or 2.69 per cent. 44804

Q. That, of course, would increase the difference if you cut out a portion of the mains?

A. Yes.

Q. Leaving the active mains in each case as scaled by Mr. Marks and as they appear upon our records for the purpose of comparison?

A. Yes, sir.

Q. How near did Mr. Marks state to you that he thought he could come on scaling the maps to the exact mileage of the mains?

A. His exact words were, "I think I can come within 5 per cent of it"; and my reply was, "You cannot come within 15 per cent." 44805

Q. Isn't it the fact that since November 17th, 1906, when Mr. Marks made his examination, or began it, that mains have been added to the maps which were on the records of the company before that, but which had not been transferred to the maps?

A. Yes, sir.

Q. And does this schedule which you now present show what those were?

A. Yes, it does, and it is as follows:

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Mains scale

Active
Disuse

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Maps, 118
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Size	Side	Street or Avenue	
8 in.	East	St. Nicholas Pl.	13
6 in.	North	152nd Street	8
6 in.	South	136th Street	18
6 in.	South	157th Street	3
6 in.	North	170th Street	24
6 in.	South	156th Street	4
6 in.	North	145th Street	237
6 in.	North	35th Street	3
6 in.	North	45th Street	10
8 in.	North	54th Street	

44807

44808

Leaving, acco
statement a
uncorrected
which is eq
1 per cent.

09

OF MAINS ENTERED ON INSURANCE VOLUME MAPS SINCE

	From		To
t.	N. N. C. 150th St.	6 ft.	N. S. C. Edgecom
t.	W. E. C. St. Nicholas Place	30 ft.	W. W. C. St. Nic
t.	W. W. C. Convent Ave.	261 ft.	W. W. C. Conve
t.	E. W. C. Broadway	6 ft.	E. E. C. Wall Riv
t.	W. W. C. Ft. Washington Ave.	310 ft.	W. W. C. Ft. W
t.	E. W. C. Broadway	4 ft.	E. E. Wall Rivers
t.	W. W. C. Broadway	368 ft.	W. W. C. Broad
t.	E. E. C. Lexington Ave.	12 ft.	W. W. C. 3rd Av
t.	E. E. C. 1st Ave.	362 ft.	E. E. C. 1st Ave
	W. C. Line 10th Ave.	4 ft.	W. E. C. 11th Av

0

1

VOLUME MAPS SINCE NOVEMBER 17th, 1906

		To	Feet No. of	Volume Entered in	Volume	Map
6	ft.	N. S. C. Edgecombe Ave.	1,210	12/ 4/06	11	256
30	ft.	W. W. C. St. Nicholas Pl.	62	12/ 4/06	11	256
261	ft.	W. W. C. Convent Ave.	243	12/ 4/06	11	243
6	ft.	E. E. C. Wall Riverside Drive	554	12/ 4/06	11	260
310	ft.	W. W. C. Ft. Washington Ave.	286	12/ 4/06	12	261
4	ft.	E. E. Wall Riverside Drive	650	12/ 4/06	11	260
368	ft.	W. W. C. Broadway	131	12/ 4/06	11	254
12	ft.	W. W. C. 3rd Ave.	440	12/ 4/06	4	74
362	ft.	E. E. C. 1st Ave.	352	11/19/06	4	3
4	ft.	W. E. C. 11th Ave.	884	11/19/06	6	103
			4,772			

Q. How many feet are there?

A. 4,472 feet.

By the Master:

Q. Those were not taken into account by you in making your examination?

A. No, sir.

Mr. Page: They were taken in by him when he gave his 822 miles.

The Witness: Certainly not. This is since I gave my testimony.

Mr. Mathewson: I am merely illustrating that the maps would not at any time exactly coincide 44810
with the record of the books, because there are mains in the books which have not been transferred to the maps, probably at all times, more or less.

Mr. Burr: I understand this is merely offered for the purpose of comparison. It is not now claimed they have more miles of mains?

Mr. Mathewson: No. We are simply claiming the mileage of mains which appeared on October 31st, 1905, as Mr. Simpson has testified, but of course your measurements made last November must represent some little different mileage from that, undoubtedly. 44811

Mr. Burr: That is an assumption of yours, isn't it?

Mr. Mathewson: It must be. I think it is a fair one, though. But as you attempted to attack the 822 miles we are meeting it in that spirit.

Mr. Page: Then I understand that these four thousand feet that you put in now were things that were on the books of the company and entered into the 822 miles, but had not been transferred to the maps.

The Witness: No, sir.

Mr. Mathewson: No, Senator.

Mr. Page: Then do you claim since October 31st that you have laid those additional mains which had not been transferred to the maps when Mr. Marks made his measurements, but have since been transferred to the maps? If that is so why should they enter into the calculation at all?

Mr. Mathewson: Yes, I think so. They do not enter into the calculation. All we are claim-
44813 ing is 822 miles which we had on October 31st, 1905, not including mains put in since, because we cannot follow it up to the very date, else we would never get through with this action.

Mr. Page: What are these mains added since? What does that show? If it had been added since and had not been put on the maps, or been added to the books since and added to the map since—

Mr. Mathewson: You do not understand the case, Senator. On the 17th of November, when Professor Marks made his examination there were certain mains which had been laid and which
44814 appeared in the records of the Engineering Department. Those mains are not placed upon the maps until after they are laid and after they appear in the Engineering Department records, so you would always probably find by the company's records a few more mains than appeared on the maps, because they are not transferred to the maps for perhaps a week or a month after they appear in the record of the company. It is done at convenience by draughtsmen. That is the point. It is merely to illustrate the impossibility of the kind of a comparison, even from that

standpoint, which Mr. Marks seeks to make in checking our book records of mains.

Mr. Page: Illustrations are all right, but testimony that certain additions were made or existed at that time, it seems to me, should be more comprehensive.

Mr. Mathewson: We will put it in, if you want it on the record.

By Mr. Mathewson:

Q. That is a correct statement, is it, Mr. Simpson?

A. It is a statement of mains entered on our maps 44816
since Professor Marks made his measurements, that is all it is.

Q. But those mains were in your books when Professor Marks made his measurements, were they not?

A. No, sir.

Q. None of them?

A. None of them. This is an alteration of the map since Professor Marks made his measurement.

Mr. Mathewson: Then in that view I do not see that it is material. It is not material for the purposes of a comparison.

Q. Isn't it a fact that there are frequently mains 44817
on the records of the company which have not yet been transferred to the maps?

A. There isn't a range where you wouldn't find them.

Q. So that an examination of the map even if correct as to scale and everything else, would not show exactly the same figures as the books, as a rule? It would show a smaller figure, wouldn't it?

A. It might neither show it in any. These reports are sent in and it does not mean to say immediately they are received they are entered in the books or on

the maps from the books. The draughtsmen who enters them up might have important work on hand for a week before he could enter them and in that case they would not be on the maps, but the record would be in the office.

Q. But you would know what they were?

A. Yes, and the amount of mains we had at that time would be the book records plus the reports sent in and not entered on the books, if there were any.

Q. Now, Mr. Marks presented the schedule showing his estimate of cost of original installation of pipes
44813 according to the size?

A. Yes, sir.

Q. And he stated that in cases where mains were laid by contract that 15 per cent should be allowed beyond the rate where they were laid by the company. Have you prepared a schedule showing the value of the mains, original installation, based upon Mr. Marks' figures, even deducting the disused mains and taking only the 795 miles of active mains?

A. Yes, sir.

Q. Is that the computation which you have in your hand?

A. Yes, sir. It is as follows:

44814

ESTIMATE OF INSTALLATION VALUE— OCTOBER 31st, 1905.

(Based on mileage at that date, at Prof. Marks' prices.)

Size	No. of Feet	Price per Foot	Amount	
1 1/2"	1,407			
2"	4,365	$ .925	4,037.63	
3"	222,741	1.07	238,332.87	
4"	557,469	1.22	680,112.18	
5"	2,799	1.42	3,974.58	
6"	2,129,088	1.625	3,459,768.00	
8"	528,040	2.095	1,106,243.80	
10"	71,286	2.41	171,799.26	
12"	321,536	2.937	944,351.23	
16"	98,901	3.78	373,845.78	
18"	29,633	4.28	126,829.24	
20"	178,803	4.757	850,565.87	
24"	45,956	5.645	259,421.62	
30"	131,583	7.71	1,014,504.93	
36"	22,242	9.695	215,636.19	
				$9,449,423.18

Deducting the mains disused at October 31st, 1905, calculated on Prof. Marks' prices as follows:

ize	No. of Feet	Price per Foot	Amount	
2"	125	.925	115.63	
3"	53,444	1.07	57,185.08	
4"	49,388	1.22	60,253.36	
5"	38,151	1.625	61,995.37	
6"	3,017	2.095	6,320.62	
0"	738	2.41	1,778.58	
2"	265	2.937	778.30	
0"	1,813	4.757	8,624.44	
4"	34	5.645	191.93	
0"	183	7.71	1,410.93	
				198,654.24
				$9,250,768.94

To which is added 15 per cent of the cost of those mains laid by contract. 433,753.53

$9,684,522.47

The books of the company carry this cost, including also the 27.871 miles of main disused but not abandoned, at only $7,852,151.03.

MAINS LAID BY CONTRACT.

(Taken over at Consolidation.)

Size	Feet	Price	Value
1 1 2"	1,275		
2"	2,844	$ .925	$2,630.70
3"	2,051	1.07	2,194.57
4"	19,692	1.22	24,024.24
6"	410,867	1.625	667,658.88
8"	155,072	2.095	324,875.84
10"	13,482	2.41	32,491.62
12"	87,490	2.937	256,958.13
16"	48,085	3.78	181,761.30
20"	3,353	4.757	15,950.22
24"	3,474	5.645	19,610.73
30"	22,635	7.71	174,515.85
			$1,702,672.08

LAID SINCE CONSOLIDATION.

(Up to October 31st, 1905.)

ize	Feet	Price	Value	
0"	19,085	$4.757	$95,068.65	
4"	7,039	5.645	39,735.15	
0"	108,765	7.71	838,578.15	
6"	22,242	9.695	215,636.19	
			$1,189,018.14	$1,189,018.14
				$2,891,690.22
Total.				433,753.53
15 per cent of same.				

NOTE: Based on mileage at Oct. 31st, 1905. Prof. Marks' prices.

Mr. Page: Is this a computation made up from Dr. Marks' testimony?

Mr. Mathewson: No, not entirely. It attacks his testimony as to certain elements, the cost of laying a main, and applies it to the 795 miles of active main, and also makes the addition for the mains laid by contract where the cost would be 15 per cent more, and Mr. Simpson, I shall ask in a moment as to how that is made up, the contract part.

Mr. Page: Isn't that a matter for a brief, instead of testimony?

Mr. Mathewson: No, I don't think so. I think it is fair testimony.

Mr. Burr: It is merely a computation.

Mr. Mathewson: No, it is more than a computation.

Q. You know what portions of the mains of the company were laid by contract, do you not?

A. I do.

Q. And Mr. Marks' testimony was that 15 per cent should be allowed additional where mains were laid by contract to the figures that he gave?

A. Well, his testimony was that you must deduct 15 per cent from the prices he gave because the mains were not laid by contract. 44834

Q. Were some of the mains of the company laid by contract?

A. Yes, sir.

Q. To your certain knowledge?

A. Yes, sir.

Q. And have you included in this statement the mains that were laid by contract, by the figures which Dr. Marks gave for mains laid by contract?

A. Yes, sir.

Q. And the other mains, have you included at the figure which Dr. Marks gave for mains laid by the company and not by contract?

A. Yes, sir. 44835

Q. Isn't it a fact that some of the mains were laid by contract beyond those that you have included at contract prices in this schedule?

A. Yes, sir.

Q. Do you know exactly how much they were?

A. I do not.

Q. So you have not attempted to include or estimate?

A. I have not attempted to include those.

By Mr. Page:

Q. Where you state mains have been laid by contract, is the amount that is entered upon this schedule the exact amount of the contract price as paid by the company?

A. No, sir. I have taken Professor Marks' price here. You see it shows on the top.

Mr. Page: I object to this then. It does not seem to me as relevant or material in any way.

The Master: I allowed some testimony the other day for the defendant which was very much
44837 of the same general character as this, and therefore I will now allow this testimony.

Mr. Page: Irrespective of that point, if they wish to attack his estimate of contract price, why not do it by showing what the contract prices were?

Mr. Mathewson: We are not attacking them in any way.

Mr. Page: I would like to get a few facts and not have only an estimate as has been given so far as to the value of mains.

Mr. Mathewson: You seem to be trying to protect the City's witness.

44838 Mr. Page: No, I am not. I am trying to get the evidence in in some shape where it will be of value.

Mr. Mathewson: Mr. Marks testified as to the cost of installation of different sizes of pipes. We have taken his own schedule and included as contract mains only the mains that we know were laid by contract, and in that case we have included Mr. Marks' own figures for the amount where they are laid by contract, and we are showing upon his own figures that the cost of the mains is what they appear in this schedule.

44839

Mr. Page: We now have in the case three different valuations of the same mains, given by this witness, for different purposes prepared. Now, if we are going to have something accurate as to contract price and laying mains, to rebut Mr. Marks, it seems to me, it should be the actual cost price, if you want to show that his price was wrong in any way.

The Master: I said I would admit it as I had admitted other similar testimony.

Mr. Page: Exception.

44840

By Mr. Mathewson:

Q. And according to those figures of Mr. Marks, what would be the cost of original installation of these 795 miles of active mains?

A. $9,684,522.47.

Q. That is nearly two million dollars more, is it not, than the $7,852,151.03 at which the company carries on its books the 795 miles of active mains, plus 27.871 miles of disused mains?

A. Yes, sir.

Q. Referring to your map measurements again, on the map the mains are made to run in a straight line to appearances, are they not?

44841

A. Yes, sir.

Q. Do they, in fact, run in straight lines through the blocks?

A. We try to run them in straight lines wherever we can.

Q. Is that in every case possible?

A. No, sir.

Q. You have to curve around the manholes and one obstruction or another?

A. Yes, sir.

Q. In every such case does it not give a greater

length of main than would appear from the straight line on the map?

A. Yes, sir.

Q. Even if the scale of the map were correct?

A. Yes, sir.

Q. Is it occasionally the case that they turn to go around manholes, or, rather, thousands of such cases?

A. Without any question there are thousands of such cases today in New York.

Q. And is the construction around a manhole more or less expensive than the construction of straight

44843 pipe to the same extent?

A. It is at least 50 per cent more expensive.

Q. Did you find that any allowance for such things as that was made by Mr. Marks in his figures or schedules?

A. No, sir.

Q. Again, as to the disused mains on the map not abandoned, where a main is disconnected, it is indicated on the map, isn't it, by a scratching out?

A. By an erasure.

Q. The main is still there, isn't it?

A. In the case of those gaps, yes, sir.

Q. And the erasure merely indicates that the connection has been severed?

44844 A. That the main is disconnected at that point.

Q. Did you observe whether, in measuring the maps, Mr. Marks or his assistants excluded these places where these erasures were?

A. I did, sir.

Q. As a matter of fact, mains are there, are they not?

A. Yes, sir.

Q. Did you yourself see the maps and measurements so that you know?

A. I saw Professor Marks' measurements.

Q. Now, about what proportions of these measurements of Mr. Marks' and these schedules from Exhibit 92 to Exhibit 103, did you examine in testing their accuracy?

A. Well, we went over between 10 and 20 per cent of the maps in the volumes.

Q. You haven't been over then 20 per cent of the schedules for the purposes of comparison?

A. Certainly not more than twenty, and I don't think 20 per cent even.

Q. Supposing the same ratio of error continued throughout the balance of the schedules as you dis- 44846
covered in the 20 per cent you examined, how would that bring out the totals of mains as compared with the actual mileage of the company?

A. I think Professor Marks would give us more mileage than we actually claim.

Q. Fifty or one hundred miles, in the same ratio?

A. Yes, sir.

Mr. Page: What do you complain of, if he gives you more mileage?

Mr. Mathewson: We do not. We are pleased with the whole situation ourselves.

At 12:55 P. M. a recess was declared for lunch, until 2:15 P. M. 44847

After recess.

COLIN C. SIMPSON resumed.

By Mr. Mathewson:

Q. In referring to these valuations which have been the subject of attack by the defendants in their testimony, is the price of pipe today higher or lower than it was when you made the computations which were attacked, that is in 1906?

A. It is a great deal higher.

Q. And if the mains were to be computed on the cost of reproduction today it would raise your $12,050,000 how much, perhaps?

Mr. Kirby: I object to this, your Honor.

Mr. Mathewson: Well, all right.

Q. It would raise it on the basis of present prices, would it not?

A. At least 15 per cent.

Mr. Kirby: And next year it might be 20 per cent lower?

44849 Mr. Mathewson: Precisely. I am merely showing that the tendency of materials is upwards.

Mr. Kirby: And the tendency of mechanical devices is downwards, which equalizes the cost.

Q. Now, having disposed of Mr. Marks, or rather his testimony, let us look at Mr. Edgerton's testimony for a few moments. The testimony to which I am directing particular attention begins at page 4033, with regard to the depth of mains, pages 4033 to 4035. Mr. Edgerton says that he has found a shallow main a preventive of troubles in services rather than adding to it. Have you had any such

44850 experience as that a shallow main prevents trouble with services?

A. I have had the opposite experience.

Q. Did you ever hear the theory advanced until Mr. Edgerton gave it?

A. Never.

Q. What is the experience of the company with its services in the City of New York, in cold weather?

A. That the shallower a service is, the more trouble we will have from it, and the deeper a service is, the less trouble we will have from it.

Q. Was the winter of 1903-4 a particularly severe winter, do you remember?

A. 1903-4? No, I do not remember. 1903-5 I remember.

Q. Was there not a severe winter two or three years ago?

A. 1904-5 was a very severe winter.

Q. Did you find it necessary in many cases during that winter to take up the pavement and thaw up the ground around your shallow services?

A. Yes, sir.

Q. Where the services were deeper, did you have as much trouble?

A. No, sir. 44852

Q. What do you say to Mr. Edgerton's statement that frost does not interfere with service pipes when the mains are shallow, or does not so seriously affect them?

A. Well, I do not agree with him at all.

Q. Do you know of any city where it is the custom to lay shallow service pipes in a high altitude, in order to take advantage of the cold, so to speak?

A. I never heard of the theory before. I have heard the opposite.

Q. In regard to lamp risers, what is your experience as to the number of lamps frozen out in cold weather in New York? 44853

A. It has been common in severe winters in New York during a prolonged cold snap to have absolutely thousands of lamps out in one night.

Q. And is it necessary to keep a large gang of men continuously at work thawing out these frozen stand pipes?

A. Not only a large gang, but large gangs of men in every district.

Q. By stand pipes you refer to risers, as Mr. Edgerton calls them?

A. Risers.

Q. What is the cover at which the mains are laid in Manhattan, if possible?

A. They average, the Consolidated mains, average a cover of 2 feet 9 inches.

Q. And how deep do you lay them where you can do so?

A. From four feet to three feet six inches; the minimum I allow when it is possible to lay them at that depth is three feet six inches.

Q. Is it possible in the island of Manhattan to adhere to any fixed rule as to depth?

44855 A. No, sir.

Q. Why not?

A. On account of the multitude of subsurface structures.

Q. In this very severe winter of two or three years ago what was the condition of the ground as to depth of freezing as compared with the normal year?

A. The frost that winter reached, in places, four feet three inches deep, which is deeper than I have ever known it in Manhattan before, in my twenty-five years' experience.

Q. And the average winter is how deep?

44856 A. Last winter it did not reach twelve inches.

Q. But the average is not over two feet six inches, is it?

A. It is generally a very severe winter when it reaches three feet in depth.

Q. So that in the average winter the mains are not frozen, that is to say, the frost does not extend down more than to the top of the mains, does it?

A. No, sir.

Q. Isn't it true that during this severe winter of two or three years ago, the pipes of the company were frozen throughout substantially the whole win-

ter, that is, the frost below the pipes and the pipes surrounded by frozen earth?

A. There was, I should say, at least 80 per cent, between 70 and 80 per cent, of our mains were surrounded by frozen earth, mains and services.

Q. Now, Mr. Simpson, in this severe winter, when your mains were frozen up, according to Mr. Edgerton's theory, as I understand it, that that should produce some precipitation of moisture so you would have less trouble with the services than usual, what is the fact? Did you have less trouble during that winter or more trouble than usual with your services? 44858

A. I don't quite understand the question, Mr. Mathewson.

Q. (Question read.) In other words, did you have more trouble or less trouble with your services the year that your mains were frozen up with frost four feet deep, or did you have less trouble than you do when the mains are not frozen up?

A. No, sir, the deeper the frost got the more trouble we had, and the climax came when the frost got down to four feet three inches deep, the most trouble of all.

Q. Then what was the condition as to your services? 44859

A. Then they were freezing by the thousand.

Q. And you did not find the fact that at the mains were embedded in frozen earth was helping your services at all?

A. Not one bit.

Q. Do you know at what depth the mains in the City of Montreal were to be placed according to Mr. Bemis' estimate?

A. I know from my own knowledge; I have been out there and have seen them.

Q. Well, what?

44860

A. They do not allow any mains to be laid less than four feet to four feet six inches, and where they can get deeper they do it, when they can get to six feet they do it.

Q. On account of the temperature?

A. On account of the frost in the ground.

Q. Now, Mr. Edgerton, at page 4037, says in general that he has followed the cost of digging trenches in which to lay pipes, and the refilling of the same in detail. Does his description or theory apply, or can it apply, to pipes in large places and under New

44861 York conditions?

A. No, sir, it cannot.

Q. Would a situation that would apply in Danbury or Asheville apply in New York City at all?

A. It might in some instances; I don't know—

Q. As a general proposition?

A. As a general proposition it would certainly not.

Mr. Kirby: The witness is not familiar with the peculiar conditions of Danbury, I suppose?

Mr. Mathewson: Well, he is with small places in general.

Q. In laying such large pipes as this company is

44862 laying, thirty-inch, thirty-six inch and forty-eight inch, you require, do you not, derrick men and large derricks and other material that you do not require in laying smaller mains?

A. Yes, sir.

Q. Now, Mr. Edgerton in his estimate of pipe referred to the cost of pipe laid beside the ditch. Are you permitted in New York City to lay your pipe beside the ditch while you are opening the ditch on one side of the street?

A. We are not allowed to cart any pipe into the street until we have a permit, and our permit is issued

on the condition that we commence work within twenty-four hours after the receipt of the permit.

Q. Where do you have to place your pipe when you open a trench on one side of the street?

A. On the opposite side of the street.

Q. And it cannot, therefore, be delivered at the trench, but has to be rolled across the street when you get ready for it, is that right?

A. Yes, sir.

Q. Are you permitted to open a trench of unlimited length in New York City?

A. No, sir; we are limited to six hundred feet. 44864

Q. That is less than three blocks.

A. Two blocks. Two blocks is five hundred and twenty feet.

Q. Are you entitled to open more trench until that is filled?

A. No, sir.

Q. Mr. Edgerton said he had made no allowance, so I understood it, for bridging. What is true as to bridging in laying mains here?

A. Mr. Edgerton did not mention anything about bridging.

Q. Very good. Will you mention something about it? 44865

A. We are required to keep open every street we cross, and in running a line up an avenue we have a street every two hundred feet and sixty feet, and to keep that street open we naturally have got to bridge, bridge for both wagon traffic and for passengers.

Q. Did you find any allowance for bridging in Mr. Edgerton's estimates?

A. Not one cent.

Q. Now, in taking the length of pipe, Mr. Edgerton divides the length of three and four-inch pipe between what he calls old pipe of a certain weight and new pipe of a certain other weight. What is the fact as to

that small pipe; is that new or are you laying that small pipe now?

A. I have been laying pipe for the Consolidated Gas Company for 25 years, and I have never used any other weight than what I have quoted in my testimony.

Q. But as to the size of pipe, are you putting in three, four or five-inch pipe now?

A. No, the only three or four-inch pipe I have laid in my time has been—it might possibly be called mains, but they are short lines down an alley or a
44867 courtyard where there are three or four houses in the court or alley, a blind alley, we would run in place of a service pipe to supply these houses, and naturally a pipe that supplies four or five houses is called a main and not a service.

Q. But outside of that have you laid anything less than six inch pipes since 1889?

A. No, sir, absolutely none.

Q. So that small pipes would all be old pipes?

A. All have been laid prior to my time.

Q. Of course, it does not follow from that that the company is not using and cannot use three, four and five inch pipe where it exists, to send gas through
44868 it?

A. Not at all.

Q. Of the thirty inch pipe Mr. Edgerton assumed 60,000 feet to be old and 71,583 feet to be new, in estimating weights. As a matter of fact how much of that pipe was old, old before consolidation?

A. I can not give you offhand the only thirty inch pipe that was in existence before consolidation.

Q. Just look and see the total. I do not care about the detail.

Mr. Kirby: What do you mean by the old and new?

Mr. Mathewson: I am assuming Mr. Edgerton's estimate. He said he estimated a certain amount was laid before 1884, when the lighter weights obtained.

Mr. Kirby: You mean lighter weights used prior to that date?

Mr. Mathewson: Exactly so.

The Witness: I can tell you offhand what thirty inch main was laid before consolidation. The only thirty inch was a thirty inch main that ran from 109th Street and Second Avenue to Sixtieth Street and Second Avenue through 44870
Sixtieth Street to Lexington Avenue; outside of that the Municipal Company had one on Forty-sixth Street which ran from the Municipal works at Forty-fifth and Eleventh Avenue to Forty-sixth Street and Third Avenue.

Q. Well, it is not over 20,000 feet or such a matter?

A. It is less than 20,000 feet all told.

Q. Of old thirty inch pipe?

A. Of old thirty inch pipe.

Q. Of the thirty inch pipe Mr. Edgerton gave 11,930 feet as old and 11,242 feet as new. Is it not a fact that every inch of that has been laid within the 44871
past three years?

A. A thirty-six inch gas main was not known in New York up to three years ago. We laid the first one which was ever laid in New York.

Q. Mr. Edgerton has given in his computation or has assumed certain weights for pipe. Do you find that the weights for pipe which he assumed correspond with the actual weights of pipe that the company has employed?

A. In hardly a single instance does he agree with us at all.

Q. Have you prepared a schedule showing the size and weight of the pipe used in the Consolidated Gas Company?

A. I have.

Q. As compared with Mr. Edgerton's figures?

A. Yes. Shall I call them off?

Q. I do not think it is necessary. Supposing you say they are as follows:

The Witness: They are as follows:

WEIGHTS PER FOOT OF CAST IRON PIPE.

44873

Size	Con. Gas Co. Includes hub.	Edgerton's Weights Old	New
3-in.	13	11	12
4-in.	19	17	18
5-in.	0	0	0
6-in.	32	25	30
8-in.	44	38	44
10-in.	57	50	55
12-in.	74	58	72
16-in.	114	100	110
18-in.	136	120	130
20-in.	160	140	150
24-in.	215	185	200
30-in.	311	270	260
36-in.	425	360	360
48-in.	660	0	0

44874

Q. In other words, are the weights which Mr. Edgerton assumed in general smaller or larger than the weights the company has in the ground?

A. In practically every case they are a great deal lighter.

Mr. Kirby: So I may understand this exactly,

are these weights of Consolidated Gas Company, including hub?

The Witness: Yes, including the hub.

Q. For what pipes are they, old or new?

A. There is no old and new. We make no distinction. We have used the same weight for twenty-five years. There is no such thing as old and new.

Q. I see you have opposite the forty-eight inch main 660 pounds for the Consolidated Company weight and zero for Mr. Edgerton's weight. Did he give any weight for that?

A. He did not give any weight for that. I may say we had no forty-eight inch mains in the ground as of October 31, 1905. 44876

Q. Now, of the six inch pipe alone, practically half of the company's mains are of that size, are they not?

A. Yes, sir.

Q. And what weight does Mr. Edgerton give for six inch pipes?

A. He gives for old twenty-five pounds per foot, and for new thirty pound per foot.

Q. Whereas the weight which company actually uses is what?

A. Thirty-two pounds per foot.

Q. And if you take the weight given by him of the new mains it shows a difference of two pounds, and that minimum difference would amount to more than 400— 44877

A. 4,000,000 pounds.

Q. To more than 4,000,000 pounds on the six inch mains?

A. Yes, sir; four and one half million pounds, about.

Q. Now, Mr. Edgerton suggested that the reason for the use of heavier pipe, than he assumed was because pipe had become cheaper since it sold at $60, or

870, or 880, prior to consolidation. You say that there has been no change in weights?

A. In weights?

Q. Of pipe.

A. None.

Q. And what governs the weight of pipe which you require to put in the ground, the price of traffic conditions?

A. The weight is governed by external conditions that have to be contended with.

Q. Traffic conditions?

44879 A. Traffic conditions, disturbances of the soil; as a matter of fact, with the things we have to contend with. If it was only a matter of internal conditions we could get along with stove pipe; it would be plenty heavy enough for our pressure.

Q. But, as a matter of fact, traffic conditions are burdensome in New York, heavy traffic?

A. Yes sir. As a proof of that, in numerous cases we use thirty-six and forty-eight inch mains the same weight as water pipe is used, and I know of numerous instances in New York where thirty-six inch and forty-eight inch Croton mains have been broken not by internal conditions, because the pipe is tested any-
44880 where from 250 to 300 pounds to the square inch, and they never have any more than seventy pounds, and in every case it has been due to external conditions.

Q. Now let me ask you, Mr. Simpson, whether the company uses any heavier pipe than your experience and knowledge has taught you is necessary to meet these conditions in New York City?

A. It certainly does not. It uses pipe—the weight of pipe we are using today results from numerous conferences between the Chief Engineer, Mr. Bradley, other engineers in the gas business in New York City, and other men taking care of gas mains.

44881

Q. From your knowledge of New York conditions and New York traffic and the exterior conditions generally, would you consider it safe or advisable to put in lighter pipes than the company is now employing?

A. I would not consider it safe at all.

Q. Now, Mr. Edgerton at page 4042 of his testimony in explaining some discrepancies, as I understand it, stated he figured his calculations on the short ton at $28.90 and that you figured on the long ton at the same price. Is that correct?

A. No, sir.

44882

Q. What is the fact?

A. I figured on a short ton in every case. In no part of my testimony did I mention the long ton at all.

Q. Have you prepared and have you here a statement of the weight of the Consolidated Gas Company's pipe in the ground by size, mileage and net tons?

A. Yes, sir.

Q. The total is how much?

A. 122,018.4 net tons or short tons. It is as follows:

44883

44884 Colin C. Simpson, Direct.

Size	No. of feet mum	No. of feet pipe	Weight per foot	Net tons
1 1/2-in.	1,407	1,436	7 lbs.	5
2-in.	4,356	4,456	10 lbs.	22
3-in.	222,741	228,866	13 lbs.	1,487
4-in.	557,469	572,700	19 lbs.	5,441
5-in.	1,799	1,849	26 lbs.	24
6-in.	2,129,088	2,187,638	32 lbs.	35,002
8-in.	528,049	542,561	44 lbs.	11,936
10-in.	71,286	73,246	57 lbs.	2,087
12-in.	321,536	330,378	74 lbs.	12,223
44885 16-in.	98,901	101,621	114 lbs.	5,792
18-in.	29,633	30,448	136 lbs.	2,070
20-in.	178,803	184,391	160 lbs.	14,751
24-in.	45,956	47,551	215 lbs.	5,111
30-in.	131,583	136,152	311 lbs.	21,171
36-in.	22,242	23,015	425 lbs.	4,890
Totals	4,344,849	4,466,407		122,018

Q. And in your computation you have figured on the short ton delivered to the dock, plus any cost of handling and stacking, have you?

44886 A. And delivering to the work—no, I beg pardon, not on the value of the pipe. The value of the pipe I have figured the cost delivered on the dock and the carting to the yard and the stacking in the yard.

Q. The cost of the pipe to you before you send it out to the ditch?

A. Before it is sent out to the ditch.

Q. Have you prepared a schedule showing the extent of the error of Mr. Edgerton as to the weight of pipe?

A. Yes, sir.

Q. Comparing each size?

A. Yes, sir.

Q. And is this it (handing paper)?

A. Yes, sir.

Q. The first is the summary and the second paper is the detail?

A. Yes, sir. It is as follows:

DIFFERENCE IN WEIGHTS OF PIPE AS USED BY CONSOLIDATED GAS COMPANY AND AS CALCULATED BY H. H EDGERTON.

44888

Size	Total weight as calculated by Mr. Edgerton	Total weight Consolidated Gas Co. Standard	Difference
1 1 2			
2	74,820	100,273	25,452
2 1 2			
3	2,572,892	2,895,633	322,741
4	9,784,442	10,591,911	807,469
6	58,870,000	68,130,816	9,260,816
8	21,732,000	23,233,760	1,501,760
10	3,770,730	4,063,302	292,572
12	21,050,592	23,793,664	2,743,072
16	10,429,000	11,274,714	845,714
18	3,732,290	4,030,088	297,798
20	26,020,450	28,608,480	2,588,030
24	8,891,200	9,880,540	989,340
30	34,811,580	40,922,313	6,110,733
36	8,007,120	9,452,850	1,445,730
	209,747,116	236,978,344	27,231,228
27,231,228 lbs. at $28.90 net ton			$393,491.13

44889

90

Edgerton's total weight of pipe, claimed to include the 1 1 2 in., 2 in. and 5 in., and with his excess of 20,000 feet of 4 in. corrected, is given as (p. 4060) 104,873,558 net tons or 209,747,116 lbs.

Calculating the mileage of old and new pipe as apportioned by him, and on his weights, as follows (exclusive of 1 1 2 in., 2 in. and 5 in.):

Size of Pipe	New: Number of feet	New: Weight per foot	New: Total Weight	Old: Number of feet	Old: Weight per foot	Old: Total Weight
91 1 1 2						
2						
3	122,741	12	1,472,892	100,000	11	1,100,000
4	307,469	18	5,534,442	250,000	17	4,250,000
5						
6	1,129,000	30	33,870,000	1,000,000	25	25,000,000
8	278,000	44	12,232,000	250,000	38	9,500,000
10	41,286	55	2,270,730	30,000	50	1,500,000
12	171,536	72	12,350,592	150,000	58	8,700,000
16	53,900	110	5,929,000	45,000	100	4,500,000
18	17,633	130	2,292,290	12,000	120	1,440,000
20	98,803	150	14,820,450	80,000	140	11,200,000
92 24	25,956	200	5,191,200	20,000	185	3,700,000
30	71,583	260	18,611,580	60,000	270	16,200,000
36	11,242	360	4,047,120	11,000	360	3,960,000
	2,329,149		118,622,296	2,008,000		91,050,000

Gives a total of

New	118,622,296
Old	91,050,000
Total	209,672,296

which deducted from the 209,747,116 lbs. leaves 74,820 lbs., which presumably represents the total weight of the 1 1 2 in., 2 in. and 5 in., not calculated in the above because no weight per foot has been stated.

Calculating this 1 1 2 in., 2 in. and 5 in. on our weights, as follows:

1 1 2 in.	1,407 ft. at 7 lbs.	9,849
2 in	4,365 ft. at 10 lbs.	43,650
5 in.	1,779 ft. at 26 lbs.	46,774
		100,273 lbs.

44894

Q. And what does that show as to totals, in a word?

A. The difference between the weight used by the Consolidated Gas Company and those used by Mr. Edgerton amount to 27,231,228 pounds.

Mr. Kirby: This is a calculation of the difference between the weight as given by Mr. Edgerton and the weights as given by Mr. Simpson?

Mr. Mathewson: Precisely.

The Witness: No, they are not the weights as given, but the weights actually used. 44895

Mr. Kirby: The weights which you testify were used and the weights which Mr. Edgerton assumes?

The Witness: They are the weights we have used.

Q. Now, what have you got to say as to Mr. Edgerton's estimate of width of cuts required for different sizes of pipe?

A. The widths are entirely too narrow.

Q. Is it possible to lay pipe in cuts of that width?

A. In some instances which he has given, the cut does not allow us to put the pipe in the trench.

Q. As an illustration, what?

A. On the sizes of eighteen, twenty, twenty-four thirty and thirty-six inch, with a sheathed trench, there is not room even for the barrel of the pipe to go between the ranges, let alone the hub.

Q. Have you any modification to make in your estimate as to the width of trench actually required, after reading Mr. Edgerton's testimony?

A. None whatever.

44897 Q. Is it often possible to lay any size of pipe on any of the streets of the City without coming in contact with some other subsurface structures running parallel with it, which necessitates alterations or widening of the trench?

A. With a gas pipe it is not, because with the gas pipe you are given a position by the City and you must take that position whatever is in your way.

Q. So far as the salt water mains of the City are concerned, what is the rule as to other pipes?

A. They go where they please.

Q. And are you compelled to remove your pipes?

A. We are in every instance that comes in their

44898 way.

Q. Furthermore, as to the laying of salt water mains, or other pipes by the City, may they lay them and do they lay them down the middle of the street?

A. They are laying the salt water mains now in the middle of the street in many instances.

Q. Is the company permitted to lay its pipe in the middle of the street?

A. No.

Q. What do you say as to Mr. Edgerton's statement, that it is practicable to put small sizes of cast-

iron pipe, such as three and four-inch, together, before lowering them into the trench?

A. I never heard of it done before he gave his testimony.

Q. Would you consider it practicable in New York City?

A. I would not dream of trying it.

Mr. Burr: That does not answer the question.

The Witness: Well, I do not consider it practicable at all.

Q. It would be a little different proposition if you were using screwed wrought iron pipe? 44900

A. Yes, sir, that is frequently done; the pipe is screwed together and lowered into the trench.

Q. But in New York the pipe of your company is cast-iron?

A. Cast-iron, hub and spigot pipe.

Q. If you were to try to do that, lower it into the trench after screwing it together, would it be necessary to rub every joint and employ more men than it would in laying it otherwise?

A. It would cost a great deal more money than laying it otherwise. I do not believe you could lay it that way without having to recaulk the joints.

Q. Would the cost be greater or less than laying it 44901
in the usual way?

A. It would be greater.

Q. What do you say as to Mr. Edgerton's assumption of sixty-seven cents as the price per cubic yard for cost of excavation?

A. We cannot get excavation done in New York City for that.

Q. Sixty-seven cents per cubic yard?

A. No, we cannot.

Q. Do you know that from experience?

A. I know that from experience.

Q. What are you paying at present for excavation?

A. We are paying on one contract to the contractor the actual price he is being paid by the City.

Q. What is that?

A. Ninety-five cents per cubic yard.

Q. That is on Ninth Avenue in connection with the alteration necessary to the gas pipes on account of laying the thirty-six inch Croton main, is it?

A. Yes, sir.

Q. Will you look at page 4051 of the testimony. Taking his width of trench and depth of trench as
44903 per his testimony on page 4051, his yardage of 900,120 cubic yards, plus 10 per cent for bell holes, or a total of 990,140 cubic yards, that would be the total, would it not, in place of his 914?

A. He gives 900,000 yards, does he not?

Q. That total should be what?

A. According to my measurements it should be, in place of 990,140.3 yards, 1,623,020.18 cubic yards.

Q. Now, Mr. Edgerton states that he computes rock excavation at $6 a yard, and on page 4061 in giving his final figures, he computes 74,252 yards of rock as costing $371,770. Is that computation made at $6 per cubic yard, which he states?

44904 A. No, sir, at $5 per cubic yard.

Mr. Kirby: It so states.

Mr. Mathewson: Precisely. He states on page 4053 that rock excavation cost $6.00, and when he comes to compute he uses $5.00.

Mr. Kirby: I called attention to that error at the time Mr. Edgerton put in his testimony, that he used $5.00 and that was the basis of his computation.

Mr. Mathewson: Look at page 4053 and see if he does not say $6.00.

Mr. Kirby: He did, and it was by reason of that that I, in opening the case on November 22nd, called attention to it and said it was $5.00 and not $6.00.

Mr. Mathewson: Very good, which is the unit that Mr. Edgerton actually desires to assume.

Mr. Kirby: He has used $5.00 in his computation, and if he says $6.00 he intended to say $5.00.

Mr. Mathewson: Do you mean to say the first $6.00 was a clerical error or did he change his views?

44906

Q. On page 4061 Mr. Edgerton has expressed his views as to the amount of lead necessary and has stated the price which he assumes to be 5.75 cents per pound. Can lead be bought and handled for that money in New York?

A. It could not at the time Mr. Edgerton testified. The day before Mr. Edgerton testified we got quotations for the very trust lead that Mr. Edgerton quoted. Our quotations were 5.95 cents delivered in our yard.

Q. That excludes handling?

A. That excludes handling and storage and interest.

44907

Q. And carting to the works?

A. No, not carting to the works, but just the handling and storing in the yard and interest.

Q. What would you say would be a minimum cost of the lead, six cents or more or less?

A. Six cents would be rather low than high.

Q. If you assume six cents per pound, and take your actual weight against Mr. Edgerton's assumed weight for lead, it would make a difference of how much for lead?

A. Mr. Edgerton figures a total of lead required

for straight pipe and specials of 4,304,080 pounds at 3 3-4 cents a pound. Taking our actual weights as are being used today and have been used for the last twenty or thirty or more years, the weight of lead would be 6,542,015 pounds.

Q. A difference of how many pounds and how much in money—well, it would be a difference of how much in money?

A. $147,220.80.

Q. Do you see, Mr. Simpson, any more lead than your experience shows you is necessary?

14980 A. We do not, sir.

Q. Now, referring to Mr. Edgerton's testimony on page 4062 as to the cost of laying pipe per running foot of the different sizes, what criticism have you to make of his figures in that regard?

A. On all sizes, Mr. Edgerton is too low; he is especially low on the larger sizes, where he seems to have either disregarded the fact that a derrick gang is necessary or else has forgotten it.

Q. Have you here an actual statement of the cost of laying thirty-six inch mains from East One Hundred and Eleventh Street to West 131st Street?

A. I have.

14990 Q. Will you state what the actual cost is in detail?

A. It is as follows:

Thirty-six inch main from East 111th Street to West 131st Street stations; length 12,254 feet; laid in 1904. The total cost of yarning, running and caulking the joints on this line was $5,920.90, an average cost per foot of $.4832.

The number of joints on this line was 1,208, an average of one joint every 10.14 feet. This is a transfer main, direct between the stations, with no connections en route, and the total number of joints is much less than would be the case with a distribu-

tion main, having specials set in at the intersecting streets.

Rolling the pipe to the skids, lowering it into the trench, entering, leveling and blocking up required force of

8 pipe and derrick men, $2.25 each	$18.00
2 men entering, levelling and blocking, $2.25 each	4.50
1 pipe and derrick foreman, $3	3.00
A total per day of	$25.50

44912

This gang was engaged in the actual work of laying pipe for 133 3/4 days, equal to a total cost—$3,410.625 for 12,254 feet, or a cost per foot of $ .2783

Making a total cost per foot for laying and caulking of .7615

As against Mr. Edgerton's estimate of .2920

A difference per foot of .4695

Q. Have you prepared a statement showing the difference upon Mr. Edgerton's figures as compared with the facts in laying the different sizes of pipe from six inches to thirty-six inches? 44913

A. Yes, sir.

Q. According to the mileage of the company?

A. Yes. It is as follows:

Mr. Edgerton's estimated cost per foot for laying and caulking pipe are much lower than this work can be done for in New York City.

Size	Edgerton's price	Cons. Gas Co. price	Diff.	No. of feet	Amount
6	.043	.065	.022	2,129,088	46,839.94
8	.045	.089	.044	528,040	23,233.76
10	.0582	.105	.047	71,286	3,350.44
12	.0647	.152	.087	321,536	27,973.63
16	.0890	.220	.131	98,901	12,956.03
18	.1040	.265	.161	29,633	4,770.91
20	.1253	.320	.195	178,803	34,866.58
24	.1521	.425	.273	45,956	12,545.99
30	.2010	.570	.369	131,583	48,554.13
36	.2920	.762	.469	22,242	10,431.50
		A total difference of			$225,522.91

Q. Are you able to compare Mr. Edgerton's figures with actual bids to the City for laying pipe for similar size in connection with these water pipes?

A. Yes, sir.

Q. You might read it.

Mr. Kirby: What knowledge has the witness of actual bids to the City.

Q. What knowledge have you of actual bids to the
44916 City?

A. This was obtained from the City contract clerk.

Mr. Kirby: I object to it.

Mr. Mathewson: The City is a defendant.

Mr. Burr: What was the question?

(Question read.)

Mr. Burr: Actual bids accepted by the City or merely proposals?

Q. Were they accepted by the City?

A. Bids accepted by the City.

Q. Will you state it?

The Master: Is your objection to the competency of it?

Mr. Kirby: My objection in the first place, is that it is not the best evidence, and in the second place, it is not relevant.

Mr. Mathewson: I suppose it is subject to verification. The City is certainly able to cross-examine on that.

The Master: I will allow it. Of course, if you insist on having the records of the City contract clerk brought here or having that clerk to produce those things— 44918

Mr. Kirby: No, I do not object to anything of that kind.

Mr. Burr: That, of course, would be the best evidence, but I assume that Mr. Simpson is in a position to swear to the accuracy of what he is about to offer.

The Witness: I am not in this case, no, sir.

Q. You had them got from the City contract clerk?

A. I had them got from the City contract clerk.

Mr. Burr: Then I object. If you bring someone here who got it from the clerk—

The Master: Yes.

The Witness: The man who got it is here. 44919

Mr. Kirby: We had to go to a great deal of trouble in bringing men down here from Danbury, who brought the oil down—

Mr. Mathewson: Do you object to it on this ground, Mr. Kirby?

Mr. Burr: I do not urge the technical objection, but I think at least you should have the man who got the paper from the contract clerk, to see that it is correct.

Mr. Kirby: Take it subject to that testimony, as we did.

Mr. Burr: Yes, subject to confirmation by the man who obtained it.

The Master: That is the best way to do it.

Mr. Mathewson: Very good, perhaps that is shorter.

Q. Now, will you state, Mr. Simpson?

A. For laying six-inch pipe, Bid A, 16 cents per foot; Bid B, 16 cents per foot; Bid C, 20 cents per foot.

Q. What is Mr. Edgerton's allowance for the same?

A. I haven't it here on this.

44921 Mr. Kirby: Mr. Edgerton's allowance was for laying gas mains and not water pipes.

Mr. Mathewson: But it is the same thing, for laying.

Mr. Kirby: No, it is not the same thing.

The Witness: For twelve-inch Bid A, 20 cents per foot; Bid B, 35 cents per foot; Bid C, 40 cents per foot.

Q. That is simply for the laying?

A. Laying the pipe, that is all.

Q. That is labor per lineal foot?

A. Labor only, yes. That is all Mr. Edgerton gives. Mr. Edgerton gives the laying of the pipe

44922 and caulking, without any other consideration.

Q. And the total including the labor per lineal foot, excavating and filling the trench per lineal foot, totals for the six-inch pipe, Bid A, 38.50; Bid B, 27.08; Bid C, 40?

A. Yes, sir, without paving.

Q. And the same as to the twelve-inch pipe, Bid A, 37; Bid B, 51, and Bid C, 60 cents?

A. Yes, sir.

Q. Also without paving?

A. Without paving.

Q. Have you the details showing the difference of

$147,220.90 in the cost of the lead as between that actually used by the company and the weights used by Mr. Edgerton for lead?

A. Yes, sir. It is as follows:

On page 4062 Mr. Edgerton gives the weight of lead required for straight pipe		3,912,800 lbs.	
plus 10 per cent for lead in specials		391,280 lbs.	
		4,304,080 lbs.	
4,304,080 lbs., calculated at 5 3 4 cents lb.		$247,484.60	44924
As given in totals	$223,000		
+ 10 per cent	22,300		
		$245,300.00	

Calculating on a joint every 10 feet (allowing for specials), and on the weight per joint actually used by the Consolidated Gas Company, the total

Size	No. of Joints	Weight per Joint	Total Weight	44925
3	22,274	5	111,370	
4	55,747	6	334,482	
6	212,908	9	1,916,172	
8	52,804	13	686,452	
10	7,128	17	121,176	
12	32,154	20	643,080	
16	9,890	30	296,700	
18	2,963	32	94,816	
20	17,880	35	625,800	

24	4,595	65	298,675
30	13,158	90	1,184,220
36	2,224	103	229,072
			6,542,015 lbs.

At 6 cents lb., or $392,520.90
A difference of $147,220.90

44927 Q. Now, on page 4063 Mr. Edgerton states that he allowed $2.14 for carting earth from the trench without dumping. What is the actual cost?

A. Fifty cents a yard.

Q. And for carting and dumping together about $1 a yard?

A. Carting about fifty cents and dumping about fifty cents.

Q. So in that case, Mr. Edgerton is more than twice as high as the fact, isn't he?

A. Yes, sir.

Q. Have you the figures showing what difference that would make?

A. Some eighty-six thousand dollars.

44928 Q. Now, Mr. Edgerton calculates the cost of replacing asphalt at $2.75 per square yard. Do you know what the city allows per square yard for pavement over the salt water mains?

A. Yes, sir.

Q. How much?

A. $3.50 a square yard.

Q. On page 4067 and following, regarding the widths of trenches for salt water mains, Mr. Edgerton has selected some cases and presented them here, but has he shown in any case the width of asphalt required to be paid for by the contractors?

A. I cannot find any case where he has shown it.

Q. Have you taken any measurements as to the width of trench for these salt water mains on your own account?

A. Yes, sir, a number of them.

Q. Have you them here?

A. I have.

Q. Have you prepared a tabulation of those you have measured?

A. Yes, sir, those that I measured personally.

Q. Is that it (handing paper)?

A. Yes, sir. It is as follows: 44930

44931

MEASUREMENTS OF PAVEMENT OPENINGS FOR TRENCH FOR SALT WATER MAINS TAKEN BY MR. C. C. SIMPSON, NOVEMBER 23rd, 1906.

Location	Width of cut only	Pavement kind	Size Main	Edgerton's Trench	Edgerton's Repaving
3rd Avenue, W. S.					
45 ft. S. S. C. 14th St	9 ft.	Block	24 in.		
3rd Avenue, W. S.					
80 ft. S. S. C. 14th St.	9 ft. 9 in.	Block	24 in.	3 ft.	3 ft. 6 in.
3rd Avenue, W. S.					
90 ft. N. N. C. 13th St.	12 ft. 9 in.	Block	24 in.		
3rd Avenue, W. S.					
80 ft. S. S. C. 13th St.	8 ft. 9 in.	Block	24 in.		
3rd Avenue, W. S.					
30 ft. N. N. C. 12th St.	7 ft. 2 in.	Block	24 in.		
Narrowest bet. 12th and 14th Streets					
13th Street					
20 ft. W. W. C. 3rd Av.	7 ft. 6 in.	Block	24 in.		
13th Street					
50 ft. W. W. C. 3rd Av.	5 ft. 3 in.	Block	24 in.		
13th Street					
80 ft. W. W. C. 3rd Av.	5 ft. 4 in.	Block	24 in.		
13th Street					
200 ft. W. W. C. 3rd Av.	4 ft. 8 in.	Block	24 in.		
12th Street					
25 ft. W. W. C. 3rd Av.	4 ft.	Asphalt	12 in.	2 ft. 4 in.	2 ft. 10 in.
17th Street					
280 ft. E. E. C. 5th Av.	8 ft. 5 in.	Asphalt	12 in.		
17th Street					
240 ft. E. E. C. 5th Av.	8 ft.	Asphalt	12 in.		
17th Street					
200 ft. E. E. C. 5th Av.	4 ft. 6 in.	Asphalt	12 in.		
17th Street					
165 ft. E. E. C. 5th Av.	5 ft. 6 in.	Asphalt	12 in.		
5th Avenue, W. S.					
70 ft. N. N. C. 20th St.	7 ft. 8 in.	Asphalt	24 in.		
5th Avenue, W. S.					
125 ft. N. N. C. 20th St.	7 ft. 8 in.	Asphalt	24 in.		
5th Avenue, W. S.					
50 ft. S. S. C. 21st St.	8 ft. 1 in.	Asphalt	24 in.		

Q. Now, this paper which you have just presented shows the actual width of cut which you measured as compared with the width of trench and repaving which Mr. Edgerton has assumed, does it not?

A. Yes, sir.

Q. For instance, I find the first one, the width of cuts, Third Avenue, west side near Fourteenth Street, the width of cuts you measured was nine feet, that is exclusive of any additional width in repaving, is it not?

A. Yes, sir; that is the actual width of the trench.

Q. What was the width allowed by Mr. Edgerton, three feet?

A. Three feet.

Q. Another one on Third Avenue near Fourteenth Street, the width is nine feet nine inches, is it not, against Mr. Edgerton's three feet again?

A. Yes, sir.

Q. And what is the width allowed by Mr. Edgerton in each of those cases? I see you have only put down the width once to cover a large number.

A. There are only two sizes of pipe given here, that is 12-inch and 24-inch, and 3 feet is the width for 24 inch and 2 feet 4 inches for a 12-inch pipe.

Q. Assumed by Mr. Edgerton?

A. Yes, sir. You will see these are all 12-inch where this starts, and these are all 24-inch, the three-footers (indicating).

Q. Mr. Edgerton criticises the width of a cut which you allow, and I want to ask you whether in actual fact the width that you allow is as much as the charges of the Asphalt Company which you have paid on the average?

A. The width of trench repaving that I have allowed falls in a great many cases far short of what we have had to pay the asphalt companies.

44938 Q. And on the average?

A. Even on the average I think it is rather below it than above it.

Q. Referring to the 30-inch main which the company is laying in 130th Street from Lenox Avenue to Seventh Avenue, a distance of 750 feet, what have you to say as to the facts shown there as against Mr. Edgerton's estimate?

A. That was a main which was laid some years ago, it is not being laid now.

Q. Yes, laid some years ago.

44939 A. The asphalt paid for by the Consolidated Gas Company measured 5.0085 feet in width, as against Mr. Edgerton's estimate of 4.1 feet.

Q. Now, have your any photographs here of these trenches which you measured or any that you examined, referring to the salt water mains regarding which photographs and measurements were presented by the defendants?

A. Yes, sir. The first one I have was taken on Third Avenue, between Thirteenth and Fourteenth Streets, the first item on that sheet. The width is on the back, and our width of trench and Mr. Edgerton's width of trench is given.

44940 Q. Just state the width?

A. On Third Avenue, west side, 45 feet south of south curb of Fourteenth Street, actual width is 9 feet for a 24-inch salt water main. Mr. Edgerton's trench width, 3 feet; the Consolidated Gas Company's width 5 feet for that size pipe. I might say that that is a six-foot rule I am holding.

Q. And that is a temporary pavement?

A. That is a temporary pavement, that is pavement just put down, hand paved, over the actual trench.

Q. As a matter of fact, is the repaving done by the city or by the asphalt company immediately after

the Gas Company fills its trench, on putting down a gas pipe?

A. No, some of the cases Mr. Edgerton testified to in his testimony months ago have not been repaved yet.

Q. What is the effect of leaving these trenches with temporary pavement which the gas company has to put over the trench awaiting the final repaving on the edge of the trench?

A. Both edges of the trench are worn away.

Q. And broken down?

A. And broken down, and it is necessary to repave 44942
a wider trench than otherwise would be necessary.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit 271.

Q. Does this correctly represent the width of the trench as shown by the temporary paving which is in the middle of the picture?

A. It does.

Q. Take the next one, Mr. Simpson?

A. Fifth Avenue in front of No. 160. The cut varies in width from seven feet four inches to eight feet one inch for a twenty-four inch salt water main. Mr. Edgerton allows three feet width of trench, and the 44943
Consolidated Gas Company five feet.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit No. 272.

The Witness: This is Fifth Avenue between Seventeenth and Eighteenth Streets, the width of cut is nine feet ten inches for twenty-four inch salt water main. Mr. Edgerton allows three feet, the Consolidated Gas Company asks for five feet, and there is the asphalt plainly shown there.

Mr. Mathewson: I offer that photograph in evidence.

Photograph received and marked Complainant's Exhibit No. 273.

Q. Take the next one.

A. Fifth Avenue, south curb of 21st Street, width of trench, eight feet one inch for a twenty-four inch salt water main. Mr. Edgerton's width three feet; the Consolidated Gas Company five feet.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit No. 274.

The Witness: The next is Third Avenue, west
44945 side, fifty feet south of south curb of Fourteenth Street, width of trench, nine feet for twenty-four inch salt water main. Mr. Edgerton allows three feet and the Consolidated Gas Company five feet.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit No. 275.

The Witness: The next is Ninth Avenue, fifty feet north of the north curb of Sixteenth Street; thirty-six inch water main; width of trench seven feet three inches. Mr. Edgerton's width four feet; Consolidated Gas Company's six feet six
44946 inches. That pipe is now being laid and the trench is still open.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit No. 276.

Q. What is the next one?

A. Third Avenue, west side, ninety feet north of north curb of Thirteenth Street. Width of trench twelve feet nine inches for a twenty-four inch salt water main. Mr. Edgerton's width three feet; Consolidated Gas Company's five feet.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit No. 277.

The Witness: Here are two photographs that belong in a pair. In the one case it is the trench that opens up on top, and the other is the same location and shows the width to which the trench had to be repaved when they got through.

Q. The first one showing the width on top refers to what place?

A. Gansevoort Street west of Hudson, twelve feet west of the west curb, looking east. Twelve-inch main. 44948

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit 278.

The Witness: And that is the same place, but showing when they got through, that they had to repave that much.

Mr. Mathewson: I offer that in evidence.

Photograph received and marked Complainant's Exhibit No. 279.

Q. In other words, is it not true that the opening at the cut does not represent the full width of the opening down below, by reason of cave-ins and so forth, frequently? 44949

A. In no case does the repaving have any reference at all to the width of the cut on top. With all the asphalt companies and all the Pacific and granite block pavement, if we open a cut two feet on top, and undermine the bank on each side, they allow for repaving it, repaving the entire width of the widest part of the trench, the same as shown in that case there. They are three or four feet wide, and they have to repave seven or eight feet.

Q. The last two exhibits you referred to?

A. Yes.

44050 Colin C. Simpson, Direct.

Mr. Mathewson: Perhaps we do not need to offer for any others. We have some others.

Q. You do not claim that every part of the trench for a salt water main is of this same width?

A. No, sir.

Q. But this is what goes to make up the average?

A. Yes, sir.

Q. And is it not true that cuts for putting down mains of any kind, as a rule, are ragged more or less and irregular, so that you have to cut out in repaving more than the width of the trench?

44051 A. In connection with that, here is a very good proof of that in this photograph here.

Mr. Mathewson: I will offer that in evidence as illustrating the witness's statement.

Photograph received and marked Complainant's Exhibit 280.

Q. Describe the place, if you will?

A. Fifth Avenue, eighty feet south of the south curb of Nineteenth Street, twenty-four inch salt water main. The trim for the asphalt on the west side is six inches and east side five inches, against Mr. Edgerton's allowance of three inches on each side. The actual width and the irregularity are not shown at all. It is taken just to show the—

44052

Q. In other words, the measurement you have just given is in the narrow part where you saw the measurements made?

A. It only shows the width of the trim of the asphalt. This is the trim where it is trimmed off of the concrete five inches on one side and six on the other.

Q. Now, taking for a further example the large main laid downtown in 1904, before any investigation was had; the width allowed by Mr. Edgerton for the ditch would be 4.1 feet?

A. Yes, sir.

Q. And what was the actual width average of the repaving?

A. The actual width of repaving was 8.08 feet.

Q. Or, in round figures, twice Mr. Edgerton's allowance?

A. Twice Mr. Edgerton's allowance, and more than what I called for.

Q. And do you remember what the average price of that asphalt pavement was there?

A. $3.44 per square yard.

Q. Have you any cuts or drawings, Mr. Simpson, illustrating the width of trench as compared with the 44954
size of the pipe which is being put in, allowing only the margin which Mr. Edgerton says is proper?

A. Yes, sir; they are big drawings. That is the full size drawing of the trench and pipe.

Q. To scale?

A. Well, it is the full size of the scale, you know. That is the actual size of it; the large circle is the hole.

Q. And the shaded circle is the—

A. In the barrel of the pipe.

Q. What would be the width of the trench which Mr. Edgerton allowed?

A. 2.33 feet is the width given there—2 1 3 feet. 44955

Q. In sheathing that trench, how wide sheathing do you have?

A. I have allowed for two-inch sheathing which is the smallest I or anybody else would use that knew about the business, and three-inch ranges.

Q. Is that the situation you frequently meet where you would have to use that sheathing?

A. Very frequently.

Q. Would the pipe go in that trench?

A. The pipe you see (indicating on sketch) would not pass the ranges.

Q. Would the hub of the pipe go in with the sheathing even if there were no ranges?

A. The hub of the pipe would not pass the sheathing even.

Mr. Mathewson: I offer this in evidence.

Received in evidence and marked Complainant's Exhibit 281.

Q. Now let us see another pipe.

A. (Producing another sketch.) This is drawn to the full scale, twenty-inch pipe; two feet—

Q. The same result follows here?

44957 A. The same result, that the barrel of the pipe would not pass inside the ranges, and the hub of the pipe would not go inside the sheathing.

Mr. Mathewson: I offer this in evidence.

Received in evidence and marked Complainant's Exhibit 282.

Mr. Mathewson: I will simply offer those other pipes, and I ask you to answer as to the thirty-six inch pipe.

Q. State about the blocking and wedges?

A. Mr. Edgerton has not allowed in any case one cent for blocking and wedging, which has to be used in every instance, especially on the larger sizes of

44958 pipes. All the sheathing and ranges are drawn to full scale.

The diagrams as to the twenty-four inch pipe, thirty inch pipe and thirty-six inch pipe are now offered in evidence.

Received in evidence and marked Complainant's Exhibits 283, 284 and 285 respectively.

Q. (Indicating Exhibit 285.) This is the thirty-six inch?

A. Yes, sir. There (indicating) is the line of the ranges, and there is the outside barrel of the pipe. You see there the entire distance between the outside

of the pipe, and the hub is three inches, whereas the bottom or rammer takes up five inches, and no rammer could pass through there at all, and the barrel of the pipe even would not pass those ranges.

Q. So that you have to have a rammer to get down in there?

A. I have got to have room to put a man in there and use a rammer.

Q. And there is about an inch left and no space at all left to put the rammer in?

A. That's it.

Q. Have you a rammer here? 44960

A. I have.

Q. Let us see it, such as you would use for the thirty-six inch main?

A. This (producing a long, wooden object) is a dummy rammer, actual measurement of the other one, and it is the standard rammer in this country today—in this city and country, which measures a little over five and one-half inches—five and three-quarter inches. It is round, you know.

Q. And that has to be used in what way?

A. That is used straight up and down like that for ramming (indicating). The tamping bar—

Q. How long is the bar? 44961

A. This is the actual length.

Q. Well, about how long?

A. About five feet long.

Q. The man who rams has to get his rammer down at some sort of an angle?

A. Yes, the rammer is held at an angle like that (indicating).

Q. An angle of say fifteen degrees?

A. Pretty nearly forty-five degrees.

Q. In order to ram it down thoroughly?

A. In order to get under the farthest barrel of the pipe.

Q. Now, this that you have produced is a regular rammer (indicating an iron implement brought into the room)?

A. A standard rammer as used by our company and practically all the gas companies in the country today.

Q. And the head of the rammer is circular?

A. Yes.

Q. What diameter?

A. Five and one-half inches full, or five and three-quarters.

44963 Q. And the rod is an inch and a half?

A. About an inch and a quarter.

Q. You have got to get that rammer in underneath the pipe?

A. Underneath the lowest edge of the most extreme curve of the pipe.

Q. Mr. Edgerton spoke something about laying a pipe by puddling or puddling in connection with the relaying of the pipe. What is puddling in refilling?

A. Puddling is throwing in the earth loose, and then filling the cut with water, like a water settling of the earth.

Q. What do the rules of the Street Department or
44964 of the Department of Highways, whatever department has charge in the City of New York, require as to refilling?

A. The rules themselves do not forbid puddling, but we have been repeatedly forbidden to puddle, and the rules themselves specify how the back fill shall be put in. I have got the regular rules here.

Q. Of the City of New York?

A. Yes, sir. "General Rules and Instructions for Opening and Refilling Trenches Made by Private Corporations and Individuals. Issued for the Guidance of Inspectors." By William Brookfield, Commissioner

of Public Works. They have never been altered since; they are the same rules in force today.

Q. The Commissioner of Public Works in the City of New York?

A. Yes, sir.

Mr. Burr: I object to that as not competent evidence, not proper proof of the existence of those rules.

The Witness: They are in existence today.

The Master: For the sake of convenience in view of the witness's statement I will take it as it is, and then you can have formal proof sub- 44966
mitted, Mr. Mathewson, if it is insisted upon.

Mr. Mathewson: We insist that this is proof. These are rules that have been delivered to us by the Department of Public Works of the City of New York, which have never been revoked.

Mr. Burr: You are trying to prove the adoption of certain rules at a certain time and their continued existence up to a certain time.

Mr. Mathewson: No. A state of affairs once proved to exist is presumed to continue.

Mr. Burr: You have not proved they were legally adopted.

The Witness: I asked the question of Chief 44967
Engineer Obey of the Department of Highways three weeks ago, and he told me that puddling absolutely would not be permitted in any instance.

Mr. Burr: Exception.

The Master: I will dispose of it in that way If it is insisted upon it will be easy enough to produce somebody here from the department.

Mr. Burr: Exception.

The Witness (reading): Rule No. 3: "The refilling of the trenches must be done in hori-

zontal layers of from four to six inches, which must be thoroughly compacted by hand ramming until it is firmly and solidly replaced. There shall be two rammers to one shoveller, and in case the refilling is thrown in faster than it can be rammed, the inspector must stop the shovelling until the ramming is satisfactory."

Q. Is that a quotation from the rules delivered by Mr. Brookfield, Commissioner of Public Works, of the City of New York?

A. Yes, sir; and embodied in my rules in my de

44969 partment, of which you have got a copy there.

Q. Have those rules ever been changed?

A. Never, sir.

Q. As to the depth of pipe required by the City, have you a proposal or bids or estimates issued by the City of New York in 1905, providing for the depth of pipe and the filling underneath?

Mr. Kirby: What kind of pipe?

Mr. Mathewson: Water pipe.

Mr. Kirby: I object.

The Master: That is preliminary, I suppose. We will wait and see what is to be brought out.

A. I have.

44970 Mr. Burr: As I understand, this paper handed Mr. Simpson is a blank proposal issued by the City to the contractors, and there is no evidence at all that it has any bearing upon the laying of gas pipes. It may have been for some special situation that the commissioner of that department was called upon to get specially for this form. No proof that whatever clause is in that proposal is a general clause adopted by all departments where laying of pipes is concerned.

Mr. Mathewson: Isn't it some evidence of what this city considers the proper depth below

the surface of the pipe to free it from settlings of the surface?

The Master: No, I do not think so, Mr. Mathewson.

Mr. Mathewson: Very good. I understand the Master thinks it is not competent, and I therefore will not press it.

Q. At page 4089 Mr. Edgerton states he did not know it was ever necessary to go under sewers in laying gas pipes. What is the fact in the island of Manhattan?

A. It is very rarely we can cross an avenue today 44972
with any pipe larger than eighteen inch without having to go under one, and sometimes even three sewers.

Q. How deep do you sometimes have to go below the surface in cases of that kind?

A. Sometimes reach a depth of close on to or full twenty feet.

Q. Now, certain testimony was presented here by Mr. Midgely, saying that he had measured the depth of a certain number of mains of the company at street corners, and he found these depths to be two feet to two feet and two inches, in certain cases, which were about one-third of the number of measurements that he made. Have you examined those instances in 44973
which he found the depth as little as I have stated?

A. I have not been on the spot.

Q. No, but have you examined this list?

A. Yes.

Q. Do you find every one of those to be at a street corner or crossing?

A. Yes, sir.

Q. What is the case at a street corner or crossing, which brings the pipe higher than the average, if it is brought higher?

A. Well, at practically every crossing in Man-

hattan there is so much congestion that it is a question of taking any gas pipe of any account over everything, or under everything. There is no room to get through, and the practice with small pipes where you can still maintain some cover is to go over. With a large pipe where no cover could be maintained it is best to go under everything.

Q. And these are small pipes?

A. In every instance, except the twenty inches, small pipes.

Q. And would you consider that the fair average
44975 of the depth at which pipe is carried between streets?

A. It certainly is not.

Q. And the larger pipes, you say, have to go down under?

A. Down under everything.

Q. Is that the reason none of the large pipes are found here in these schedules?

A. Probably, yes.

Mr. Burr: I object to that answer. If he does not know, he can say so. And I move to strike it out.

Answer stricken out.

Mr. Mathewson: I will put the question in
44976 another way.

Q. Would measurements of this character and of that depth reveal or disclose the larger and more expensive pipes that have to go underneath?

A. In very rare cases only.

Q. How about crossing avenues when electric companies are now operating with the underground trolley? Do you not have to go underneath?

A. Yes, sir.

Q. Mr. Edgerton, at page 4090, advanced a suggestion that in taking out rock, stone is salable. Is this the case as to such rock as you excavate in New York?

44977

A. I have never sold a square inch. I never knew of a square inch of rock being sold from a trench in New York City.

Q. Is it of a character which is salable?

A. No, sir; it is not.

Q. Is it possible, in laying your mains here, to blast off rock in great masses, so that is can be sold for any purpose like building?

A. No, sir; it comes off, in every case in a trench of that character, in small pieces.

Q. Have you ever been able to sell the rock?

A. No, sir; never.

44978

Q. Have you tried to make sales of rock and see what could be obtained for it?

A. We have always tried to get the cheapest price we could for having it carted away.

Q. Have you tried to sell it sometimes?

A. I don't remember having tried to sell it.

Q. Have you ever received any bid for it?

Mr. Burr: He says he never tried to sell it.

Mr. Mathewson: I ask, have you ever received any bid for rock of that kind?

The Witness: No, sir.

Q. Mr. Edgerton allowed nothing for the carting and dumping of the rock. The number of yards excavated by him at $1.00 a yard, how much would that amount to?

44979

A. Fifty cents a yard for cartage and fifty cents a yard for dumping. $74,252.

Q. Mr. Edgerton, at page 4105, made the suggestion that the asphalt company had made arrangements for repaving the trench for less cost than the contract price was here. Have you ever had an experience of that kind?

A. Never, sir.

Q. Has the company ever, during your experience,

been able to pay a cent less than a contractor was allowed to charge by the City?

A. Never one cent.

Q. Have you produced here, accurate to scale, sketches showing the condition of certain streets in New York City at certain points?

A. They are all avenues at certain crossings, yes, sir.

Q. Showing the difficulties in the way of the crossing of the street with pipes of the Gas Company?

A. Yes, sir.

44081 Q. How many of them are there?

A. I don't really remember how many there are

Q. This one is Broadway and Bleeker Street, looking north?

A. Yes, sir.

Mr. Mathewson. I offer that in evidence.

Mr. Burr: One moment.

By Mr. Burr:

Q. Did you make these sketches yourself?

A. They were made under my supervision.

Q. From measurements taken by you?

A. No, sir; measurements taken under my orders.

Q. Can you specify, of your own knowledge, that

44082 the measurements appearing upon these charts or diagrams are correct?

A. I haven't any doubt but what they are correct.

Q. Can you swear they are correct?

Mr. Mathewson: I suppose every drawing you put in here was not drawn in every line by your witness, was it?

A. These drawings were all made by employes in my department, under my direction.

Q. Were you present when the measurements were made in each case?

A. I was not; no, sir.

Q. Therefore you cannot say that the measurements as they appear upon these charts or diagrams are correct dimensions or measurements. You believe they are, but you don't know, isn't that the fact?

A. I think that is right.

Mr. Burr: Well, I object to them.

The Master: If that objection is pressed I will receive them on the same understanding as before, and you will have to bring somebody here who made the measurements before you get through, Mr. Mathewson. 44984

Mr. Burr: Exception.

Received in evidence and marked Complainant's Exhibit 286.

By Mr. Mathewson:

Q. What is this one?

A. West Broadway at Canal Street, looking north.

Mr. Mathewson: I offer it in evidence.

Received in evidence and marked Complainant's Exhibit 287.

Q. I will ask you as to all of these if you are yourself familiar from your records or data with the fact that the subsurface structures appearing here are in the street, and with the general location of them—I mean in these various sketches? 44985

A. Yes, sir.

Q. And, without exact measurements, do they conform generally to your knowledge of the situation there?

A. My general knowledge only. Of course, I have no detailed knowledge of every corner.

Q. This is Broadway at Morris Street, looking north, isn't it?

A. Yes, sir.

Mr. Mathewson: I offer this one in evidence.

Received in evidence and marked Complainant's Exhibit 288.

Q. This one is Sixth Avenue and Fourteenth Street, is it?

A. Yes, sir.

Mr. Mathewson: I offer it in evidence.

Received in evidence and marked Complainant's Exhibit 289.

Q. This sheet is Third Avenue and Fourteenth Street, looking north, is it?

44987 A. Yes, sir.

Mr. Mathewson: I offer it in evidence.

Received in evidence and marked Complainant's Exhibit 290.

Q. The paper you now present represents Fourth Avenue at Fourteenth Street, showing the subway going across the entire street from house line to house line, doesn't it?

A. Yes, sir.

Mr. Mathewson: I offer that in evidence.

Received in evidence and marked Complainant's Exhibit 291.

Q. Also this one shows Ninth Avenue at Four-

44988 teenth Street, looking north?

A. Yes, sir.

Mr. Mathewson: I offer that one in evidence.

Received in evidence and marked Complainant's Exhibit 292.

Q. And this is Twenty-third Street and Second Avenue, looking north, is it?

A. Yes, sir.

Mr. Mathewson: I offer that in evidence.

Received in evidence and marked Complainant's Exhibit 293, what room does that show for more pipe?

A. It shows that as far as the street is concerned between curb lines, that there is no room, unless one went under everything, to lay even a three inch pipe and get any cover on it.

Q. And this paper you now show me is Second Avenue and Forty-second Street?

A. Yes, sir; the same conditions exist there.

Mr. Mathewson: I offer that in evidence.

Received in evidence and marked Complainant's Exhibit 204.

Q. These sketches or drawing which have just been offered are only a few of many that have been made 44988
under your supervision, are they not?

A. They are.

Q. And do they show generally and substantially similar conditions in various parts of the city?

A. At every crossing of every avenue in New York City, south of 125th Street.

Q. And these are merely illustrative that you have introduced?

A. Yes, sir.

Q. Now, referring to the testimony that you have just given, have you prepared in convenient shape the calculation showing the difference in cost of paving between the cost as the company has found it and Mr. 44991
Edgerton's estimate?

A. Yes, sir; it is as follows:

44912

	Mr. Edgerton states (p. 4886) that "the cost of the asphalt and equivalent pavement" was	$2,883,664.32
	Based on 80 per cent of the mileage of each side, with an allowance of 6 in. over and above the trench widths stipulated by him, at $2.75 per square yard.	
	Based on the above figures, the number of square yards (excluding the 11 2 in., 2 in. and 5 in. pipe, which he claims has been included in his total,	
44913	but which has been disregarded here because he gives no trench widths), would be 1,080,372.5 square yards at $2.75	2,971,024.37
	or, by his own figures, a shortage of	115,410.05
	Calculating the repaving required on 80 per cent of the mileage of each size, at the widths submitted by Mr. Simpson, and a cost of $3.25 per square yard, the total would be 1,448,744.3 square yards at $3.25	4,708,418.98
	Deducting Mr. Edgerton's figures as	
44914	given on p. 4886, and above	2,883,664.32
	A difference for paving alone of	$1,824,754.66

(The detailed calculation of these items will be found below.)

CONSOLIDATED GAS COMPANY.

Mr. H. H. Egerton.

ize	Total feet of trench	Width of repaving	Total square feet	Width of trench	
1 1 2	1,407	2 ft. 6 in.	3,165.7		
2	4,365	2 ft. 6 in.	9,821.3		
3	222,741	3 ft. 0 in.	601,400.7	1 ft. 10 in.	
4	557,469	3 ft. 0 in.	1,505,166.3	1 ft. 10 in.	
5	1,799	3 ft. 0 in.	4,857.3		
6	2,129,088	3 ft. 0 in.	5,748,537.6	1 ft. 10 in.	3,
8	528,040	3 ft. 6 in.	1,663,326.0	2 ft. 0 in.	
10	71,286	3 ft. 6 in.	224,550.9	2 ft. 1 in.	
12	321,536	3 ft. 6 in.	1,012,838.4	2 ft. 4 in.	
16	98,901	4 ft. 0 in.	356,043.6	2 ft. 4 in.	
18	29,633	4 ft. 0 in.	106,678.8	2 ft. 4 in.	
20	178,803	4 ft. 6 in.	724,152.2	2 ft. 6 in.	
24	45,956	5 ft. 6 in.	227,482.2	3 ft. 0 in.	
30	131,583	6 ft. 0 in.	710,548.2	3 ft. 7 1 4 in.	
36	22,242	7 ft. 0 in.	140,124.6	4 ft. 0 in.	
			13,038,698.8 square ft.		7.
			1,448,744.3 square yds. at $3.25		
			$4,708,418.08		

To which is added 90 per cent of the total mileage, at a width of 6in.	1,955,182.0 square ft.
	9,815,155.0 square ft.
	1,090,572.5 square yds.
at $2.75	$2,999,074.37

e calculations are based on 90 per cent of the total feet of trench.

The Witness: Mr. Edgerton, taking his average of trench width at $2.75 per square yard, allows $2,883,664.32. His figures would reach according to his own calculation, $2,999,074.37, and taking his own width of trench and his own price at $2.75 per yard, or by his own figures, a shortage of $115,410.05. Taking this repaving at the width of trench as given by him and a price of $3.25 per square yard, it would amount to $4,708,418.98, or $1,824,754.66 in excess of Mr. Edgerton's figures.

Q. Your statement is now the summary of the detail which has been spread upon the record?

A. Yes, sir.

Q. Have you also prepared the figures showing the difference between Mr. Edgerton and the actual cost to the company as to excavation?

A. I have shown the difference between the figures of Mr. Edgerton's excavation and the figures as given by him in my testimony. They are as follows:

CONSOLIDATED GAS COMPANY'S DIMENSIONS.

	Trench Total feet	Width	Depth	Cubic feet
1 1/2	1,407	2 ft. 0 in.	2 ft. 10 1/2 in.	8,074.25
2	4,365	2 ft. 0 in.	2 ft. 11 in.	25,494.84
3	222,741	2 ft. 6 in.	3 ft. 0 in.	1,670,558.33
4	557,469	2 ft. 6 in.	3 ft. 1 in.	4,292,510.44
5	1,799	2 ft. 6 in.	3 ft. 2 in.	14,256.19
6	2,129,088	2 ft. 6 in.	3 ft. 3 in.	17,298,847.22
8	528,049	3 ft. 0 in.	3 ft. 5 in.	5,417,490.40
10	71,286	3 ft. 0 in.	3 ft. 7 in.	756,618.80
12	321,536	3 ft. 0 in.	3 ft. 9 in.	3,617,287.50
16	98,901	3 ft. 6 in.	4 ft. 1 in.	1,412,307.86
18	29,633	3 ft. 6 in.	4 ft. 3 in.	440,795.83
20	178,803	4 ft. 0 in.	4 ft. 5 in.	3,161,242.93
24	45,956	5 ft. 0 in.	4 ft. 9 in.	1,091,444.44
30	131,583	5 ft. 6 in.	5 ft. 3 in.	3,799,468.79
36	22,242	6 ft. 6 in.	5 ft. 9 in.	831,309.05
				43,837,906.87 cu
				1,623,626.18 cu

1,623,626.18 cubic yards at $.95

$1,542,444.87

$1,542,444.87
154,244.48
+ 10 per cent for Bell Holes = $1,696,689.35

Edgerton's total cost for excavation (900,126 cubic yards + 10 per cent for bell holes) is 990,140.3 yds. at 67¢ or 663,394.15

A difference of $1,033,295.20

FIGURES USED IN EDGERTON'S CALCULATIONS.

Size		Width of trench in feet	Depth in feet	Cubic yards per foot
3	1.833	1 ft. 10 in.	2.25 2 ft. 3 in.	1.52
4	1.833	1 ft. 10 in.	2.33 2 ft. 4 in.	1.58
5				
6	1.833	1 ft. 10 in.	2.50 2 ft. 6 in.	1.69
8	2	2 ft. 0 in.	2.66 2 ft. 8 in.	1.97
10	2.08	2 ft. 1 in.	3.00 3 ft. 0 in.	2.31
12	2.33	2 ft. 4 in.	3.20 3 ft. 2 1/2 in.	2.76
16	2.33	2 ft. 4 in.	3.33 3 ft. 4 in.	2.87
18	2.33	2 ft. 4 in.	3.53 3 ft. 6 in.	3.04
20	2.50	2 ft. 6 in.	3.80 3 ft. 9 1/2 in.	3.52
24	3.00	3 ft. 0 in.	4.00 4 ft. 0 in.	4.44
30	3.60	3 ft. 7 1/4 in.	4.60 4 ft. 7 1/2 in.	6.12
36	4.00	4 ft. 0 in.	5.00 5 ft. 0 in.	7.14

TRENCH DIMENSIONS.

CONSOLIDATED GAS CO. MR. H. H. EDGERTON

Size	Width	Depth	Width Feet in decimals	Width Feet and inches	Width Feet in decimals	Width Feet and inches
1 1/2 in.	2 ft. 0 in.					
2 in.	2 ft. 0 in.					
3 in.	2 ft. 6 in.	3 ft.	1.833	1 10	2.25	2 3
4 in.	2 ft. 6 in.	3 ft.	1.833	1 10	2.33	2 4
5 in.	2 ft. 6 in.	3 ft.				
6 in.	2 ft. 6 in.	3 ft. 3 in.	1.833	1 10	2.50	2 6
8 in.	3 ft. 0 in.	3 ft. 5 in.	2.	2 0	2.66	2 8
10 in.	3 ft. 0 in.	3 ft. 7 in.	2.08	2 1	3.00	3 0
12 in.	3 ft. 0 in.	3 ft. 9 in.	2.33	2 4	3.20	3 2 1/2
16 in.	3 ft. 6 in.	4 ft. 1 in.	2.33	2 4	3.33	3 4
18 in.	3 ft. 6 in.	4 ft. 3 in.	2.33	2 4	3.53	3 6
20 in.	4 ft. 0 in.	4 ft. 5 in.	2.50	2 6	3.80	3 9 1/2
24 in.	5 ft. 0 in.	4 ft. 9 in.	3.00	3 0	4.00	4 0
30 in.	5 ft. 6 in.	5 ft. 3 in.	3.60	3 7 1/4	4.60	4 7 1/2
36 in.	6 ft. 6 in.	5 ft. 9 in.	4.00	4 0	5.00	5 0

The Witness: Mr. Edgerton allows 900,126 cubic yards plus 10 per cent for bell holes, or a total of 990,140.3 cubic yards at 67 cents a yard, against my measurements of 1,623,626.18 cubic yards at 95 cents a yard, which makes a difference between Mr. Edgerton's figures and mine, and which brings my figures $1,033,295.20 more than Mr. Edgerton's on the excavation of trenches.

Q. Your figures, you stated, are based on the fact?

A. On the trenches as we have dug them and made

45011 them for years.

Q. And you found it necessary to make them?

A. Yes, sir.

Q. Now, there is a crossing on avenues by a street every two hundred feet?

A. Every two hundred feet, yes, sir.

Q. And in view of these subsurface structures that you find isn't it nearly always necessarily a case either of extreme width or of extreme depth, and often of both, in crossing those streets?

A. Yes, sir; in practically every instance.

Q. Have you also tabulated the figures showing the value, or cost of sheathing in the trench, which Mr.

45012 Edgerton did not include in his testimony?

A. Yes, sir.

Q. That deals with the larger sizes of pipes?

A. It is the value of sheathing left in the trench.

Q. And that amounts to how much?

A. $50,505.82.

Q. As left in the mileage of the company?

A. Left in the mileage of the company?

Q. Yes, that applies to the mileage of mains of the company?

A. No, it is just an additional expense in laying mains that Mr. Edgerton has not taken into account.

Q. Precisely. As applicable to the mains of the Consolidated Gas Company.

A. Yes, sir. The details follow:

VALUE OF SHEATHING LEFT IN TRENCH.

Size of main	Feet of board measure per lin. foot of main	Price per 1,000 feet B. M.	Price per foot of pipe	Number of feet	Value	
16"	1.750	35.00	.06125	98,901	$ 6,057.69	
18"	1.987	35.00	.06955	29,633	2,060.83	
20"	2.150	35.00	.07525	178,803	13,454.93	
24"	2.375	35.00	.08312	45,956	3,819.86	
30"	2.725	35.00	.09537	131,583	12,549.10	
36"	3.163	35.00	.11071	22,242	2,462.41	
					$40,404.82	$40,404.82
Plus cost of deriving sheathing at $8.75 per 1,000 feet, Board Measure						10,101.00
						$50,505.82

Q. Now, as an illustration on that, what about the thirty-six inch main between 111th and 131st Streets?

A. In this case we laid a thirty-six inch main in 1904, and were compelled to leave in the trench 38,766.75 feet of board measure of sheathing

Q. Why were you compelled to leave it in the trench?

A. In some cases it is not wise to draw it on account of endangering the pipes of our own system or

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water pipes or something of the kind. In other cases, we are by the city forbidden to draw sheathing. Then again, in that soil where you are down deep it is not wise to draw the sheathing because sometimes you have to dig up your main for some future purpose, it is well to have the sheathing in.

Q. Now, have you made a computation of the cost of sheathing which is not left in the trench?

A. Yes, sir.

Q. For the different sizes of pipe?

A. Yes, sir. It is as follows:

45017

Mr. Edgerton has made no allowance for the cost of sheathing which on all pipe 16 in. diam. and larger, is necessary on 50 per cent of the mileage and on sizes under 16 in., on 10 per cent of the mileage.

45018

Size	10 per cent of mileage	50 per cent of mileage	Feet board measure per foot of main	Total feet board measure
6 in.	212,908		16.20	3,449,109.6
8 in.	52,804		16.87	390,803.5
10 in.	7,128		17.65	125,809.2
12 in.	32,153		18.60	598,045.8
16 in.		49,450	20.65	1,021,152.8
18 in.		14,816	21.28	315,295.1
20 in.		89,401	22.05	1,971,303.1
24 in.		22,978	23.50	539,983.0
30 in.		65,792	25.60	1,684,262.0
36 in.		11,121	28.10	312,500.0
				10,908,264

10,908,264 feet at $20 per M. feet B. M. = 218,165.28

Labor at $8.75 per M. feet B. M. = 95,847.28

$314,012.56

45019

This calculation is based on

Lumber at	$35.00	per M. feet
Less salvage	15.00	" " "
Net cost	$20.00	" " "

Labor—Average rate $2.05 per day.

(The loss by cutting and wastage, the cost of pulling, sheathing and carting to yard are allowed for in the Salvage Credit.)

45020

Q. It shows what?

A. That with our system today in New York City I have estimated the cost of sheathing at $314,012.56, deducting for any possible salvage we might obtain.

Q. Is that also from the company's experience and your own knowledge in that regard?

A. Yes, sir.

Q. Did you find that Mr. Edgerton made any allowance for blocking and wedges?

A. Not one cent.

Q. Have you made a computation of the cost of blocking and wedging?

A. Yes, sir.

45021

Q. As to the Consolidated mains?

A. Yes, sir. It amounts to $40,784.17. The computation is as follows:

VALUE OF BLOCKING AND WEDGES.

Size	Size Block	Size Wedge
3		14 x 2 1/2 x 3 in.
4		14 x 2 1/2 x 3 in.
6		14 x 2 1/2 x 3 in.
8		14 x 2 1/2 x 3 in.
10		14 x 2 1/2 x 3 in.
12	1 ft. 4 in. x 3 in. x 6 in.	14 x 2 1/2 x 3 in.
16	1 ft. 4 in. x 3 in. x 6 in.	14 x 2 1/2 x 3 in.
18	1 ft. 4 in. x 4 in. x 8 in.	14 x 2 1/2 x 3 in.
20	1 ft. 6 in. x 4 in. x 8 in.	14 x 2 1/2 x 3 in.
24	1 ft. 6 in. x 4 in. x 8 in.	14 x 3 x 4 in.
30	2 ft. 0 in. x 4 in. x 8 in.	14 x 3 x 4 in.
36	2 ft. 6 in. x 4 in. x 8 in.	14 x 3 x 4 in.

Calculations based on

Spruce Blocking 37.50 per M. Board Measure.
Oak Wedges 14 x 2 1/2 x 3 1.6c each.
Oak Wedges 14 x 3 x 4 3.0c each.
One block and two wedges to six feet of pipe.

Cost per Lineal Foot Blocking	Wedges	Total	Number of Feet	Amount
	.0053	.0053	222,741	1,180.53
	.0053	.0053	557,469	2,954.59
	.0053	.0053	2,129,088	11,284.17
	.0053	.0053	528,040	2,798.61
	.0053	.0053	71,286	377.82
.0125	.0053	.0178	321,536	5,723.34
.0125	.0053	.0178	98,901	1,760.44
.0222	.0053	.0276	29,633	817.87
.0250	.0053	.0303	178,803	5,417.73
.0250	.0100	.0350	45,956	1,608.46
.034	.0100	.0434	131,583	5,710.70
.0417	.0100	.0517	22,242	1,149.91
				$40,784.17

45026

Q. And have you made a computation as to the cost of bridging for which Mr. Edgerton did not make allowance?

A. That is only a rough estimate. It is what I consider would be a minimum, absolute minimum cost of the bridging of streets and hydrants necessary for the laying of our main system. 45027

Q. That is how much?

A. $30,000.

Q. Now, have you taken Mr. Edgerton's estimate of the total cost of reproduction or replacing the mains of the Consolidated Gas Company as given on page 4065, to wit: $8,919,792.55, and made additions to his calculation of the items in which he has erred or which he has left out?

A. Yes, sir.

Q. Is that it?

A. Yes, sir. It is as follows:

Mr. Edgerton's estimate of the total cost of reproducing or replacing the mains of the Consol. Gas Co. is given as (p. 4066)			$ 8,919,792.55
The following items, on which he has made no calculation, should be included:			
Difference in pipe weights as estimated and as actually used	$393,491.13		
Plus 10 per cent for special wastage, etc., as calculated by Mr. Edgerton	39,349.11		
		$432,840.24	
Difference in asphalt pavement on both price and width	$1,824,754.66		
Difference in earth excavation, on price, width and depth	1,033,295.20		
Value of sheathing left in trench, and labor at $8.75 per M ft. B. M.	50,505.82		
Value of blocking and wedges	40,784.17		
Difference in lead actually used and as calculated, both price and amount	147,220.90		
Cost of sheathing trenches, 10% of mileage under 12", 50% over 12"	314,012.56		
Difference in cost of laying and caulking, actual as against estimated	225,522.91		
Cost of bridging	30,000.00		
Cost of carting and dumping rock	74,252.00	$3,740,348.22	
		$4,173,188.46	

To which is added 10% for engineering supervision, and expense, cost of city inspection, interest on and wear and tear of tools and plant, possibilities of obstruction on streets which would delay the work, serious obstruction met with underground, including sub-surface structures, clerical expense, suits for damages and other undistributed expenses	417,318.85	
	$4,590,507.31	$ 4,590,507.31
		$13,510,299.86

Q. And making these corrections, the cost of the reproduction of the mains instead of $8,919,792.55 would be how much?

A. $13,510,299.86.

Q. And that is nearly a million dollars more than your estimated cost of reproduction?

A. $900,000 more.

Q. That includes, however, the cost of carting and dumping the carting at $2.14 instead of your cost of carting and dumping at $1, and some other errors, which would reduce the total?

A. Yes, sir, and possible underestimates on my part.

Q. You mean in making up your total of $12,656,000 for reproduction?

A. Yes, sir, and in a good many cases I have been too conservative.

Q. Have you been dealing with pressure in mains and seen the effect of the pressure and of gas escaping from mains under pressure during the last twenty-five or thirty years?

45034 Colin C. Simpson, Direct.

A. I have, yes, sir.

Q. What have you to say as to the feasibility of distributing or putting gas through the City of New York under a pressure of twenty or thirty pounds as suggested by Mr. Edgerton?

A. I should be very sorry to have charge of the mains when we had such pressure as that, as he is dealing with.

Q. Have there been accidents to the mains of the company which have allowed the escape of gas within recent times?

45035 A. A great many accidents to the mains with the present pressure we are carrying.

Q. Will you give me some illustrations?

A. The most recent one I recall was on October 13th at Forty-third Street and First Avenue. In that case the Consolidated Telegraph and Electric Subway Company were laying a subway along one side of our twenty-inch gas mains. They fired an unusually heavy blast, it broke the mains and the gas immediately caught fire and blazed to the very top of the tenement houses alongside, and except for the promptness of our men—the watchman we had there was seriously burned and had to be taken away in

45036 an ambulance—and we had some men working around the corner a block away, and the superintendent of the district happened to be crossing First Avenue and saw the blaze from a mile away, and drove right down. So by a combination of circumstances, being ready, we were able to put the fire out nine minutes after it happened.

By Mr. Page:

Q. Do you claim that that was due to the pressure?

A. That was due to the gas in the main being ignited, and the pressure on the gas in that main was

two inches or 1 14 part of a pound. Now, the only reason that the block was not put on fire was on account of the prompt work of our men who happened to be there. By the time we had the stoppers in and the gas turned off, the windows of the tenement houses alongside and a saloon—the glass was all cracked and ready to break in. In another two minutes the windows would have gone, and the whole place also, and you wouldn't have been able to get near the place.

By Mr. Mathewson:

Q. What would be the result of an accident of that kind if the gas were coming through under a 45038
pressure of twenty or thirty pounds instead of 1 14 of a pound?

Mr. Burr: Objected to as being hypothetical. He has not shown he has any experience in the effect of gas explosions or the effect of fire arising, as he has testified in this particular instance in the gas mains. I do not think that is competent testimony.

The Master: He testified he had some experience with escaping gas. I think it is permissible to ask him, as an expert, what in his opinion would be the effect of gas escaping under a greater pressure than such as he has seen. Ex- 45039
ception.

A. I know in this case here, with a pressure of two inches, the matter would have been very serious indeed if our men had not been on the spot and put it out. If the pressure was twenty pounds, or 560 inches, I don't know what would have happened. There was a hole in the side of the pipe four feet long by eighteen inches wide.

Q. Would that, in your judgment, have been a very serious situation, or wouldn't it?

A. I don't believe the firemen themselves could

45040 Colin C. Simpson, Direct.

have got within 300 feet of the place, and nothing in the world could have possibly saved that block.

Q. Well, you saw the results of the explosion which took place in front of this building on Wall Street a short while ago, or of the settling of some pipes, or something like that?

A. Yes, sir.

Q. Would that same effect possibly have broken a gas pipe in settling?

A. It was just a chance that the gas pipe was not broken. If the gas pipe had been nearer to the break
45041 it would have broken. In this case we happened to lie closer to the curb, and the water main broke and our gas pipe did not.

Q. If the gas had been going through the main in Wall Street at the pressure of twenty or thirty pounds and it did break, would you apprehend serious consequences from that?

The Master: That is getting a little remote.

Mr. Mathewson: Very good.

Q. Well, I will ask whether, in your judgment, from your knowledge of pressure and your dealings with it and observation of its effects, it would be possible, by any such system as Mr. Edgerton has
45042 outlined, to maintain the pressure even under his system at every point and at all hours, within a limit of two and one-half and one inch as he testified?

A. I am morally certain it would not be possible.

Q. Assuming, however, that mains were to be put in as suggested by him, and valves put in wherever possible in order to equalize the pressure, have you computed what would be the cost today of such a system?

A. I have.

Q. How much, in your judgment, would it cost to get that in?

A. Do you mean the exact figures?

Q. Well, about.

A. Over four million dollars.

Mr. Kirby: Are you going to leave it to me to prove all the details of these four million dollars?

Mr. Mathewson: No; not if you want the details.

Q. Is this the detail to which counsel has referred as making up your total?

A. Yes, sir.

Q. That involves valves where? 45044

A. It involves in the first place section valves on all the main lines; it involves, of course, additional valves to shut off or confine the gas to certain areas. Probably the only pipe that could be used would be flanged steel pipe, we would have to use expansion joints every five hundred feet, or according to the conditions. We would not be able to take such runs of pipe; we would have to go down and around and under foundations so there would be an expansion joint required every five hundred feet. The detail is as follows:

IN RE TO MR. E'S SUGGESTED HIGH PRESSURE MAINS. 45045

74,000 ft. of 24-in. flanged steel pipe at $10.00 per ft.	$ 740,000
Labor cartage laying, etc., on above at $15.00 per ft.	1,110,000
148 expansion joints at $800.00 each	118,400
74 section valves and vaults for same at $200.00 each	14,800

45046	36,550 ft. of 20-in. flanged steel pipe at $7.00 per ft.	255,850
	Labor, cartage, laying, etc., at $11.00	402,050
	73 expansion joints at $500.00 each	36,500
	36 section valves and vaults for same at $150.00	5,400
	14,660 ft. of 16-in. flanged steel pipe at $5.50 per ft.	80,630
	Labor, cartage, laying, etc., at $7.00 per ft.	102,620
	30 expansion joints at $300.00 each	9,000
	15 section valves and vaults for same at $100.00 each	1,500
45047	For additional trunk line leading from high pressume main to the various areas, and then "letting go" through governors to each district, allowing for 25 areas and a 16-in. steel main, 2,500 ft. long to supply each area:	
	62,500 ft. of 16-in. flanged steel pipe at $5.50 per ft.	343,750
	Labor, cartage, laying, etc., at $4.50 per ft.	281,250
	125 expansion joints at $300.00 each	37,500
45048	Connections, valves (other than section valves), governors and vaults for these valves and governors	50,000
	70,000 yards of new paving at $3.25 per yard	227,500
	Making a total of	$3,816,750
	Add for contingencies of all kinds, 10 per cent	381,675
	Grand Total	$4,198,425

By Mr. Burr:

Q. What was that computation made by you?

A. By me, yes, sir.

By Mr. Mathewson:

Q. Mr. Edgerton testified he would use cast iron pipe. Would that in your judgment be the pipe to use if you were to try that experiment?

A. I would not use cast iron.

Q. Why not?

A. Because the same thing might happen as you had at First Avenue and Forty-third Street. If you laid a pipe of that kind you would have to use every 45050
precaution possible, and using cast iron pipe would not be taking any precaution.

Q. You are not familiar are you, with any city where the gas is delivered to consumers in the city by running the mains around through the city under twenty or thirty-pound pressure?

A. No, sir, I am not. Of course, I know of instances of gas being delivered to small country towns through small high pressure mains and then reduced inside the towns.

Q. Would the danger in such a town as that, even if introduced into the town, be as great as in New York City where we have this congestion of traffic, 45051
buildings, etc.?

A. Certainly not. In New York there are houses every foot of the way. In the country work you might have a house every mile or sometimes every two miles.

Q. Let me ask you generally, aside from the possibility of maintaining the pressure between two and one-half and one inches at every point and at every time under Mr. Edgerton's system, would you consider that a safe or wise system to install under the pressures indicated in the City of New York with

the conditions here existing—under pressures of twenty or thirty pounds?

A. No, sir; I would not consider it safe or wise.

Mr. Mathewson: I think that is all.

CROSS-EXAMINATION BY MR. KIRBY:

Q. I take it that your statement headed "In regard to Mr. E's suggested high pressure mains" that the cost as computed by you is your idea as to how those mains should be put down, where put down and how connected?

A. No, sir; I took the route suggested by Mr. Ed-
45053 gerton in his testimony. He suggested a main on the east side of the city and the west side of the city, and I took the only available avenues on the east and west sides.

Q. That is, you used no figures given by Mr. Edgerton except at his suggestion that there would be a main on each side of the town?

A. I used the size suggested by Mr. Edgerton, 24, 20 and 16. Twenty-four to start with, reducing to 20 and 16, and the location suggested by him.

Q. But the joints and valves and excavation, and the repaving and all matters of that kind are figures in which you have used your own—

45054 A. I informed myself on the actual cost of the pipe, actual cost of expansion joints, valves.

Q. And this statement includes entirely your own figures on those matters?

A. Yes, sir.

Q. I notice here you set out for contingencies of all kinds ten per cent. I find no mention in the statement of any amount for sheathing or blocking and wedges, or sheathing left in the trench or matters of that kind?

A. No, sir.

Q. Is that included in the ten per cent?

A. Yes.

Q. You have spoken of a certain accident that happened to one of the mains in which a pressure was maintained of about two inches. That accident was from an external cause, entirely, was it not?

A. Yes, sir.

Q. Suppose instead of being about 1/14 part of a pound pressure there, there had been, say 14/14, or a full pound pressure, what do you consider the consequences would have been then?

A. They would have been very serious indeed. 45056

Q. The windows would have probably been melted, would they not?

A. They would.

Q. The tenements would probably have been on fire, would they not?

A. Yes.

Q. And there would have been grave danger?

A. Yes, sir.

Q. If the happy circumstances you refer to had not existed there would have been far more danger, would there not? If your workmen had not been on the job and your superintendent in sight of the conflagration. 45057

A. It would have taken longer to put the fire out.

Q. Are there any mains of the Consolidated Gas Company in the City where as high a pressure as one pound is maintained?

A. There is one main in the City where that pressure has been maintained.

Q. And that is maintained every day, is it not?

A. No, sir.

Q. How often?

A. For two or three hours a night, in winter time, and then it is only for a very short time.

Q. What do you mean by the winter time?

A. Well, the months, from say, the middle of November—the first of November till the 15th of February, about.

Q. Have you ever made any experiments at all directed toward finding out how gases under as high a pressure as twenty pounds would act if an effort were made to ignite them?

A. I have not.

Q. Mr. Edgerton, in his testimony relative to the installation of a high pressure system, made reference

45059 to governors?

A. Yes, sir.

Q. Did you allow for the installation of governors in your estimate of the cost of the system which I have referred to?

A. I think I did.

Q. Are you aware that a governor is constructed which, when the pressure becomes lower than a certain point, that the gas is automatically shut off?

A. Not automatically shut off. You mean the pressure is automatically reduced.

Q. Automatically shut off?

A. Reduced.

45060 Q. Reduced, and, in some instances, automatically shut off if the governor is so adjusted?

A. You mean the gas is put out altogether?

Q. I do.

A. It would be a pretty poor governor, I should think. I wouldn't want to use such a governor.

Q. A governor could be, and many of them are so adjusted, that on the sudden releasing of pressure the gas would be automatically shut off or brought down to a merely nominal pressure, is that not the fact?

A. I really do not quite understand your question. Do you mean that if you are trying to govern a cer-

tain district, or a certain town, and reduce the pressure from high pressure to low pressure, is that what you are talking about? That is, bring the gas up to the town under high pressure and reduce it to low pressure after it has reached town?

Q. Well, that is one kind of governor. We will assume that we have installed this high pressure system and that we have at various points on the main a governor which is so adjusted that if the pressure on one side of that governor was suddenly reduced that the governor would automatically close so as to prevent any great flow of gas from that side of the 45062
governor where the pressure was reduced. Now, I ask if you are not aware that such governors are made and are in use?

A. Wouldn't it necessitate the use of two governors acting simultaneously, or one would only act on the end the gas was coming from?

Q. It might.

A. Well, I am not familiar with a governor of that kind at the present time.

Q. But such would not appear to be either impossible or unusual?

A. You mean to say if your main was working under a pressure of twenty pounds and that main was 45063
broken and the gas escaping that the governor would shut itself?

Q. That is what I mean.

A. I don't know of any such governor, no, sir.

Q. It does not appear an impossible proposition to you, does it?

A. It is an improbable proposition to me. I do not say it is impossible.

Q. In other words, you could not employ an automatic shut-off valve to a gas main?

A. A governor passing gas at twenty pounds pres-

sure would have to be opened up to let the gas go through, and stay open.

Q. Well, I won't argue the point with you, Mr. Simpson, I think it very plain.

A. Well, I would be glad to answer the question if I could understand what you are trying to get at. I certainly am not trying to evade the answer.

Q. You have presented here a statement showing the estimated cost of bridging. Did you include such cost in your first estimate of the value of the mains of the Consolidated Gas Company?

45065 A. I did, sir.

Q. Under what items did you include it?

A. Divided it up among the items of labor and material.

Q. Didn't state it specifically, did you?

A. No, sir.

Q. Did you include that of blocking and wedging?

A. I did, sir.

Q. Where did you include that?

A. The same way.

Q. Did you include that as sheathing?

A. I did.

Q. In the trench?

45066 A. Yes, sir.

Q. And left in the trench?

A. Yes, sir.

Q. Where was that included?

A. The same way, labor and material.

Q. Taking for example your statement in reference to the blocking and wedges, do I take it from this that you consider that every foot and every size of pipe has to have a block placed thereunder and wedges inserted?

A. Not every size. Every size of pipe has to be blocked in some way. In the smaller sizes we have

no blocking only wedges. In the larger sizes we use wedges on top of the blocking.

Q. All pipes laid in the City have blocks laid thereunder?

A. Yes, sir.

Q. None of them are laid directly on the soil?

A. I have never had pipes laid that way; wouldn't allow them to be laid that way.

Q. And that has been the invariable custom for the twenty years you have been connected with the company?

A. It is the invariable custom in the gas business 45068
in any city of any size for either gas pipes or water pipes.

Q. You have always done it here?

A. Yes, sir.

Q. Do you know whether or not the pipes which were laid prior to the time you became connected with the company were laid in that way?

A. I have not the slighest doubt they were.

Q. Do you know?

A. I do know.

Q. How do you know?

A. Because I have seen lots of them taken up and seen the blocking and wedges taken up. 45069

Q. And every bit of pipe laid in the City of New York has blocks laid under?

A. Not every foot, I allow for blocking every six feet, two blocks and two wedges to each length of pipe.

Q. Just explain that a little more fully. Two blocks and two wedges.

A. No, sir. One block and two wedges to every six feet of pipe.

Q. At what point on the pipe does that block come?

A. The first block would come back of the hub

and the second block about the middle of the pipe, the middle of the length.

Q. So that in no instance would the pipe lay next to the ground?

A. Oh, yes, sir, the pipe lays next to the ground, of course, the blocks are countersunk in the ground.

Q. Are you familiar with the pipes of the East River Gas Company?

A. The East River Gas Company? Yes, sir.

Q. Were they laid in this wise?

A. They were.

45071 Q. Are you sure of that?

A. Certainly.

Q. Did you lay them?

A. I saw them laid.

Q. Are you familiar with the weights of pipe of that company?

A. The weights of pipe of the East River Company?

Q. Yes.

A. I am. I will say familiar. I know of the weights of them.

Q. Are they the weights which you have used in your estimate?

45072 A. They are not there.

Q. That is part of the Consolidated Gas Company's system, is it not?

A. No, sir.

Q. In no part?

A. No, sir.

Q. Using none of the mains of the East River Gas Light Company?

A. No, sir, not one inch.

Q. A part of it?

A. No, sir.

Q. Those pipes are laid in the Borough of Manhattan, are they not?

A. Yes, sir, I would like to correct that statement, Mr. Kirby, if I may. When I said they were using lighter pipe they used lighter pipe till the time I was in charge of their mains and from that date on they have used the same weight of pipe that we have used.

Q. It is a fact, is it not, that it used lighter pipe?

A. Lighter pipe; yes, sir.

Q. Is it not a fact that the weight of the three-inch pipe that they use is the same as that given by 45074
Mr. Edgerton, eleven pounds?

A. They haven't used any three-inch pipe.

Q. Is it not a fact that the weight of four-inch pipe they used was the same as that given by Mr. Edgerton?

A. No, sir.

Q. Is it not a fact that the weight of their four-inch pipe is eighteen pounds?

A. No, sir; their four-inch pipe runs nearly to nineteen, the same as ours.

Q. Then, if we have a report of the East River Gas Company appearing in the American Gas Light Journal for November, 1898, that it was eighteen 45075
pounds for four-inch pipe, the same would be correct, would it?

A. The report might be correct as far as the weight of pipe called for. They might have asked for eighteen and got eighteen and three-quarters, or eighteen and seven-eighths.

Q. A statement by the company that their four-inch pipe was of a weight of eighteen pounds and paid for such, would be correct?

A. I think so.

Q. Are you aware that their six-inch pipe is the same weight as that given by Mr. Edgerton?

A. It is the same weight given of the new pipe by Mr. Edgerton, thirty pounds; not the old, they never used it.

Q. And that their eight-inch pipe—

A. Eight-inch runs forty-two pounds to the foot against our forty-four, or used to run, but does not now. I say they are using the same weights we used.

Q. Is it not a fact that their twelve-inch pipe has a weight of seventy-two pounds to the foot?

45077 A. Against our seventy-three, yes.

Q. And Mr. Edgerton's seventy-two for his new pipe?

A. Yes; one pound difference between that and ours.

Q. And that twelve-inch pipe weighs 148 pounds as against Mr. Edgerton's 150 for his new pipe?

A. Yes, sir.

Q. And that their thirty-six inch pipe weighs 350 as against Mr. Edgerton's 360 for both old and new?

A. Yes. I know that the thirty-six inch pipe they laid was entirely to light, and I commended upon it at the time and thought they would have serious

45078 trouble with it before they got through.

Q. Have they?

A. They have had quite a little trouble with the joints.

Q. What effect on the joints has the lightness of pipe?

A. None whatever.

Q. You are familiar with the firm of R. D. Wood & Company, of Philadelphia, are you not?

A. I know there is such a concern.

Q. Never bought pipe from them?

A. No, sir.

Q. Do you know whether or not they have furnished pipes to be laid in the City of New York?

A. I do know it.

Q. Are you familiar with the weights of such pipe?

A. They make pipes to all kinds of weight.

Q. Are you familiar with the weight of their pipe which has been laid in the City of New York?

A. I am not.

Q. You know that they have furnished pipe that has been laid in the City of New York down to three inches in the weight of eleven pounds?

A. No. 45080

Q. And that they have furnished four-inch pipe in the weight of fifteen pounds?

A. No.

Q. Or furnished six-inch pipe which would weigh twenty-five pounds?

A. No, sir.

Q. Or eight-inch pipe which would weigh thirty-eight pounds?

A. No, sir.

Q. Or ten-inch pipe which would weigh fifty pounds?

A. No, sir.

Q. Or twelve-inch pipe with a weight of fifty- 45081
eight pounds?

A. No, sir.

Q. Or sixteen inch pipe with a weight of 100 pounds?

A. No, sir.

Q. Or twenty-inch pipe with a weight of 140 pounds?

A. No, sir.

Q. Or twenty-four inch pipe with a weight of 125 pounds?

A. No, sir.

Q. Or thirty-inch pipe with a weight of 325 pounds?

A. No, sir.

Q. Or thirty-six inch pipe with a weight of 400 pounds?

A. No, sir.

Q. All of the pipe of the Consolidated Gas Company has not been laid since you became connected with the company, has it?

A. No, sir. The greater part of it has.

Q. Where did you get your knowledge of the weight of such pipes as were in the ground when you
45083 came to the company?

A. From pipes taken up here and there belonging to all the constituent parts of the company.

Q. You have no direct knowledge of those weights, have you?

A. I have got direct knowledge of it for twenty-five years back.

Q. Many of the pipes were laid prior to that time, were they not?

A. Some of them were, yes, sir.

Q. You have no direct knowledge of those weights, have you?

A. Except that I am familiar with the weights the
45084 other companies used and always have been.

Mr. Mathewson: He was connected with one of the constituent companies, you know, long before the Consolidated was formed.

The Witness: The Municipal and the Knickerbocker.

Q. How long have you been familiar with the laying of pipes in the Borough of Manhattan, City of New York?

A. Twenty-five years.

Q. We have here your statement as to the cost of sheathing. It states that such sheathing is necessary

on fifty per cent of the mileage, on all pipes sixteen inches in diameter, and on sizes under sixteen inches, on ten per cent of the mileage.

A. Yes, sir.

Q. Has not the sheathing anything to do with the depth at which the pipe is laid?

A. Yes, sir—not solely that, but it has partly to do with that.

Q. But your fifty per cent is based upon the depth which you state the Consolidated Gas Company pipes are laid, as well as the diameter, is it not?

A. The fifty per cent is based on my knowledge of 45086
when sheathing is necessary. It is not so often necessary with small sizes of pipe as it is with the larger sizes.

Q. And is not that true largely because of the fact that the largest sized pipes are laid deeper beneath the surface of the street than the smaller sizes?

A. The bottom of the trench, of course, is deeper than the smaller pipe.

Q. And is not that the reason?

A. One of the reasons; yes, sir.

Q. So if the trench were not as deep as that you have used, the percentage would be less?

A. It would depend entirely on the depth of the 45087
trench and the character of bank you are working in and the structures you are contending with alongside of your trench.

Q. Of course you use no sheathing where there is a rock excavation, do you?

A. No, sir.

Adjourned at five P. M. to January 15th, 1907, at eleven A. M.

45088 Colin C. Simpson, Cross.

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

CONSOLIDATED GAS COMPANY OF NEW YORK,
Complainant,
vs.
45089 JULIUS M. MAYER, as Attorney General of the State of New York, WILLIAM TRAVERS JEROME, as District Attorney of New York County, FREDERICK E. GUNNISON, JOHN C. DAVIES and LUCIAN L. SHEDDEN, constituting the New York State Commission of Gas and Electricity, and the City of New York,
Defendants.

Before: ARTHUR H. MASTEN, Special Master.

45090 NEW YORK, January 15, 1907, 11:30 A. M.

Met pursuant to adjournment.

Present:

THE MASTER,
MR. MATHEWSON,
MR. BURR,
MR. KIRBY.

COLIN C. SIMPSON, resumed the stand and further testified:

CROSS-EXAMINATION BY MR. KIRBY (CONTINUED):

Q. Let us take up the method of laying mains such as the Consolidated uses in the City. You first re-

move the pavement, then dig your trench in the usual way, as to the general character of the earth or other material which you excavate. How deep do you go before you put in the sheathing?

A. You haven't started at the beginning. What size of main do you mean?

Q. Twelve-inch main, we will assume.

A. Twelve-inch main on an avenue?

Q. On an avenue, yes.

A. I would apply for the permit first for doing that work, and then dig a big test hole along the line to see whether the main could be laid in that place. If 45092
it could not be laid there I would have to do one of two things—get the permit changed, if it could be changed, or else arrange for altering the structures which come in our way, or having the structures altered which come in our way.

Q. Now, we will assume that it is possible to put a main down in the avenue which we selected. What is the first physical act which is to be done?

A. The first physical act is, of course, to remove the pavement, whatever it is. Then excavate. As the excavating is going on, if it is necessary to sheath the sheathing is put in as the excavation progresses.

Q. When is it necessary to sheath? 45093

A. It is necessary to sheath in almost every case in a deep trench.

Q. What do you mean by a deep trench?

A. Any trench over three feet six, to four feet deep.

Q. Is that so in all characters of soil?

A. In New York City it is not safe to go beyond that depth without sheathing—in hardly a single instance.

Q. That does not hold true in rock, does it?

A. No.

Q. Now, we have our trench dug and sheathing put in in such cases as you have suggested—

A. I did not get through. With a shallow trench, if you have a main—

Q. What do you mean by that?

A. A trench two feet nine, covered from the top of the pipe. A trench three feet deep even. If there is any subsurface structure running parallel and close to our trench it is then necessary to sheath, too, to take care of that structure. If we are running alongside or near a sewer, as is often the case when there
45095 are two sewers, one on each side of the street, it is also necessary to sheath.

Q. Yes.

A. If any filled in soil is around, any bad or loose soil, it is always necessary to sheath with any kind of trench. Where the ground is filled in with broken rock it is also necessary to sheath.

Q. Now, we have our trench dug and what happens?

A. When the trench is dug?

Q. Do you make any effort to level it up in any way?

A. Oh, yes; the bottom is leveled. If it is a main
45096 twelve-inch and above we put the pipe in, get the blocking in first and start laying the pipe. The pipes are put in, put together, yarn the joints and caulked.

Q. You spoke of putting the blocking in?

A. Yes, sir.

Q. Now, on what size pipes do you use blocking?

A. Anything above twelve-inches.

Q. And where do you use it?

A. We use it back of the hub and midway—

Q. No, why? What is the object of blocking?

A. It is not good practice in the gas business to lay pipes in without blocking.

The Master: That is hardly an answer, Mr. Simpson.

The Witness: Well, it is considered necessary.

Q. Necessary for what?

A. Necessary for a support for the pipe.

Q. You have leveled up the bottom of your trench, have you not?

A. You have.

Q. Your pipe rests therein?

A. Yes.

Q. What object has the blocking then?

A. You can never level your trench as level as the 45098
pipe itself would be.

Q. Then it is for the purpose of leveling the pipe?

A. No; it is for the purpose of giving a firm support to the pipe.

Q. Does or does not your pipe rest on the bottom of the trench?

A. Can I make a little sketch explaining to you what I am getting at? That (indicating on a piece of paper) may be the bottom of the trench, but it may not be a straight line like that (indicating); it may be uneven. Now, there might be a little hump there and the pipe would rest on that, and would have no rest here and no rest there (indicating); that is, 45099
no rest at the ends; whereas, if there is a block there (indicating) and that is the hub there (indicating) the length of pipe rests on that, and the next block comes under the next length of pipe.

Q. So if your trench was dug so that the bottom would be level there would be no need of blocking?

A. If the trench were dug in good clean soil, and could be made absolutely level so the pipe would rest its entire length on that, blocking would not be necessary.

Q. And the longer the length of pipe which rests

upon a level surface the better the support there is; is that not so?

A. Yes.

Q. And are you not aware that in practice, which is recommended by certain authorities, that the laying of pipe upon a trench without blocking is advised as against laying it upon blocking?

A. I have not heard of it.

Q. It would not surprise you to learn that many miles of pipe have been laid without blocking?

A. Not a bit. I would lay it in the country myself.

45101 Q. Why would you if a trench was level?

A. If I could have ideal soil in New York I would not bother about blocking.

Q. What is the peculiar fact about the soil here which prevents you from getting the bottom of a trench level?

A. I do not suppose there is a cubic foot of ground in New York that has not been only dug over once, but repeatedly dug over and over again, and in every street almost the character of the soil changes. You might have sand in one street, you have clay in another, you have got rock in another, you have got filled in rock in another, you have got garbage fill

45102 in another.

Q. How does that in any way change the ability to level up the trench?

A. It forces us to make a rule that all pipe shall be blocked and not leave whether the pipe shall be blocked or not to the foreman who is doing the job.

Q. What size pipe do you lay by hand, and what size do you commence to use a derrick for?

A. Commence to use a derrick at 16-inch.

Q. Why do you use a derrick for that size?

A. Because it is easier to handle the pipe.

Q. And the number of men which would be neces-

sary to lay a pipe of that size would be such as to make it more expensive than if you used a derrick?

A. It is cheaper to go to the expense of using the derrick and the derrick gang than it would be to try to put the pipe in without the derrick.

Q. What is the difference between the price of labor such as would be used in laying the pipe by hand and such as would be employed in using the derrick?

A. It would depend entirely upon the composition of the gang, a derrick gang. You take men at $2.00 or $2.25. The men in sheathing might get $1.75; some of them $2.00.

45104

Q. Do you pay any of your men as low as $1.50?

A. No, sir. I stated $1.75. $1.90 is the least we pay?

Q. What did you mean when you spoke of $1.75?

A. Because some time ago we used to pay $1.75.

Q. As late as last July?

A. Yes, sir.

Q. When did you change to $1.90?

A. Two months ago, or about a month ago.

Q. In the statement which you made yesterday, in reference to the allowance for the cost of sheathing you state that in all pipes sixteen-inch diameter and larger, fifty per cent of the mileage must be sheathed?

45105

A. Yes, sir.

Q. And on sizes under sixteen inches, on ten per cent of the mileage?

A. Yes, sir.

Q. Would you use ordinary conditions sheathing on a trench for a pipe of six inches in diameter?

A. Under ordinary conditions?

Q. Yes.

A. It would depend upon what the conditions were.

Q. Straight laying?

A. It would depend entirely upon what the condi-

tions were alongside of the trench. I might have to sheath if I went down only two feet with a six-inch pipe.

Q. But ordinarily you would not?

A. If there was nothing nearby I would not, or if the soil was perfectly good and safe.

Q. In reference to the sheathing left in the trench, if you did have to sheath, for a shallow trench such as we have spoken of?

A. Yes, sir.

Q. Would you leave the sheath in that trench?

45107 A. In some cases I would have to.

Q. In many cases?

A. Quite a few, yes.

Q. In as many cases as though the trench were a deep one?

A. No, probably not.

Q. As a matter of fact, most of the sheathing is left in deep trenches?

A. In deep trenches.

Q. Where it may be useful if an excavation is made at another time for repair or other purposes?

A. What do you mean by shallow and deep trenches? What do you refer to?

45108 Q. Such as I made reference to, a trench of four and a half feet, or something of that kind.

A. I have testified on trenches two feet nine covered and four feet to four feet six, and trenches where we go down seventeen or nineteen feet.

Q. Well, we will use a deep trench in the way you have used it. The deeper the trench, the more apt you would be to leave the sheathing in, would you not?

A. Yes, sir.

Q. You have presented a statement showing a comparison of the cost of laying and caulking pipes as given by Mr. Edgerton and as given by you?

A. Yes, sir.

Q. Your testimony being under the heading "of Consolidated Gas Company price"?

A. Yes, sir.

Q. In your testimony it also appears as to what your cost of laying is, exclusive of caulking?

A. I don't know that I gave any testimony exclusive of caulking.

Q. On page 312 of the record you testified and presented a table with reference to the cost of laying pipe. Will you explain what those figures include?

A. Why, this one dollar and fourteen cents repre- 45110
sents the entire value of labor and material for laying one and one-half-inch pipe under a new pavement. That twenty-nine cents represents the entire cost for labor and material in laying one and one-half-inch pipe under the old pavement, and so on, all the way down. This column here is the entire cost of pipe, labor and material. That column (indicating) is for the old pavement, and that is for the new pavement (indicating another column).

Q. Including caulking?

A. Yes; except that ten per cent.

By Mr. Mathewson:

Q. Does that refer— 45111

A. That refers to my big sheet.

Q. Has that the addition for the additional values of pipe and so forth, which you added at the end?

A. No, sir; that does not include the ten per cent you know.

By Mr. Kirby:

Q. What do you mean by your ten per cent?

A. The ten per cent, for engineers and the cost of pipe as of December, 1905.

Q. What is the cost of pipe as of there in this statement on page 312 of the record?

A. October 31, 1905.

Mr. Mathewson: If you have his whole sheet there you can easily see it is the trench. I do not think you were here when it was put in. You will see he made these additions to the additional value of pipe and other things, following the schedule, and he subsequently testified that that did not, as it obviously did not, include all the expense.

Mr. Kirby: I understand the ten per cent is not in there.

The Witness: And the cost of laying is not in there.

45113 By Mr. Mathewson:

Q. Whatever was or was not in there you explained in your testimony?

A. Yes, sir.

By Mr. Kirby:

Q. If, Mr. Simpson, you ascertained that the price of labor in some other city was the same as that which you have stated you would pay those engaged upon laying the pipe, would you expect that the cost of laying the pipe in that other city would be as great as that which you use here?

A. No, sir.

45114 Q. You would not?

A. No, sir. I know it would not.

Q. Some more peculiar New York conditions?

A. Yes, sir. The proof of that is that I can lay mains cheaper in the Bronx than I can in Manhattan—also in Long Island City, and have been and am continually doing that.

Q. What is your cost of laying mains in the Bronx?

A. It will run probably—I cannot give you the exact figures off-hand—but it will run anywhere from ten to twenty per cent below in New York.

By Mr. Mathewson:

Q. Below Manhattan?

A. Below Manhattan.

By Mr. Kirby:

Q. And you pay your labor as high there as in Manhattan?

A. Yes, sir.

Q. That is straight pipe laying?

A. Yes, sir.

Q. You have made reference to the price of laying waterpipe. Is it not a fact that it generally costs more to lay water pipes than it does gas mains of the same diameter, the actual laying of the pipe? 45116

A. Not one cent more.

Q. Is it not heavier?

A. Yes, sir.

Q. Does it not cost more to caulk it?

A. Not a bit more.

Q. Does it not have to be caulked for heavier pressures?

A. No, sir. It is not caulked for any more pressure than we caulk ours. In fact our pipe is more thoroughly caulked than a water pipe.

Q. Then that would infer negligence in caulking water pipe? 45117

A. I am not criticising contractors or anything of that sort.

Q. Is it necessary to caulk gas mains better than water pipes?

A. It is necessary to put in the best work that can be put in.

Q. Is it not as necessary to put in the best work that can be put in on water mains?

Mr. Mathewson: That is a conclusion of this witness.

A. I should say yes, it is. It ought to be done.

Q. Water mains carry more pressure than your gas mains, do they not?

A. A great deal more pressure.

Q. And the trouble from pressure generally comes in the joints where there is caulking, does it not?

A. Yes, sir.

Q. The first thing that happens is that the caulking is blown out?

A. Rarely blown out. The joints will start leaking.

Q. Would leak at that point?

45119 A. Yes. But you must remember that a leaking water joint will often "make up" of itself; it will rust up, whereas a leaking gas joint won't. When a gas joint starts to leak the gas itself lubricates the opening, and does not let it rust until it is recaulked again.

Q. And if the leak in the water main is sufficient to let the water flow that aggravates the leak so that in time we have a large flow of water rather than a small trickling which might rust up the joint?

A. Yes. If it is a strong leak it won't rust up the joint. If it is "bleeding" only it will rust up the joint.

Q. Water pipe certainly is not generally a heavier pipe than a gas pipe or main, is it?

45120 A. Water pipes run slightly heavier in New York City than gas pipes, up to a size of twenty-four inch. From twenty-four-inch up we use—under thirty-inch—thirty-six and forty-eight, we use the same weight as water, but thirty-inch very nearly the same weight. The difference is so slight it would not make any difference in the handling at all.

Q. Would it surprise you to hear that the weight of water pipe laid in the City of Boston runs many pounds lighter per foot than that which you have given as being used by the Consolidated Gas Company for their gas mains?

A. You have got to tell me which water pipe. They

use there five or six different weights. They have got four weights to my knowledge; four distinct weights.

Q. Would it surprise you to know, for instance in thirty-six-inch mains put down in the City of Boston to carry water, the weight thereof was 391.6 pounds as against your 425?

A. No, it would not surprise me at all.

Q. Nor that the weight of their thirty-inch was 240.2 against your 311 pounds?

A. No.

Q. Nor that the weight of their twenty-four-inch was 200.6 as against your 215? 45122

A. On the lightest schedule of weights—they have four schedules of weight there, and when you get to the heaviest schedule it is the heaviest pipe used for water pipe I think, in this country today; the top weight.

Q. But these weights to which I have made reference are not such as used here? These are weights that are used in Boston, are they not?

A. I would not be surprised. I do not know positively. I know they have four weights, four scales of weights, and they use each scale under different conditions.

Q. And would it or would it not surprise you to know that these pipes to which I have made reference are designed to carry a pressure of over forty pounds? 45123

A. It would not surprise me a bit. The pipes that I have there—our pipes are tested to a pressure of over one hundred and fifty pounds to a square inch. We do not have to deal with internal pressures at all; it is the external pressures we are looking out for.

Q. If it were that the report of a certain committee to which we have already made reference in the previous testimony, being the report of the Board of Division, relative to the distribution of gas, made to the American Gas Institute of Chicago, in 1906—

Mr. Mathewson: When has he referred to that?

Mr. Kirby: You referred to it and I referred to it when Mr. Edgerton was on the stand.

Mr. Mathewson: Oh, yes. This witness has not referred to it.

Mr. Kirby: I said in the previous testimony.

Q. (Continuing.) Giving a weight of lead for joints and gas pipes, such as those used by Mr. Edgerton, would you be inclined to change your opinion that Mr. Edgerton had not used sufficient weight of lead?

45125 A. No, sir; I would not.

Q. Nor if the water pipes to which I have made reference in Boston used less lead for their joints than that which you have used for the joints of the pipes of the Consolidated Company?

A. Would it change my opinion?

Q. Would that in any way change your opinion?

A. No, sir; it would not.

Q. I think you stated yesterday that the cause of the breakage was generally from external causes?

A. External?

Q. Rather than from any internal pressure?

A. Yes.

45126 Q. And that I presume might be the pressure of the weight of the earth or such material as was on top of the pipe?

A. Yes.

Q. By reason of the breakage in a water main the earth was sifting out underneath, or something of that sort?

A. Yes. In the water mains that I have seen break, it has been due to the pipe being improperly blocked.

Q. Now, there is some wrought iron gas pipe or main in this City?

A. Yes, sir.

Q. Not all cast-iron?

A. No, sir. We haven't any of it.

Q. The Standard, I think, use wrought iron?

A. The Standard is all wrought iron, ten-inch and below.

Q. Your statement in reference to the necessity for bridging in the laying of pipe is one which you applied anywhere where there is traffic either by pedestrians or vehicles?

A. It would only apply to a City similar to New York, where you have got a crosstown street every two hundred feet.

45128

Q. Well, you wouldn't need as much in a country village, but I suppose you would need some?

A. It depends on whether they would allow you in a country village to block the street and have the people go around the other way. You cannot do that in New York.

Q. It is a question of the people's desires?

A. It is a question of the demands of the City authorities.

Mr. Mathewson: This is a City regulation. We cannot help that.

Q. You have said that you have never made sales of rock taken from the trenches?

45129

A. Yes, sir.

Q. Have you never sold rock or earth taken from the trenches for the purpose of fill?

A. I only know of one case of rock being sold in New York City in connection with any of our work, and that was in excavating for a new holder at 63rd Street and Avenue A. We had some good rock there, and some of it was sold at fifty cents a load, but never in connection with main work.

Q. Is it not the custom of contractors in the City when they are excavating a cellar or for other under-

ground purposes, to make sale of the earth or rock excavated for use as fill in low lying lots?

A. No. The man who has got low lying lots to fill will always demand from fifty cents up per yard for dumping privileges.

Q. And you know of no instance?

A. I know of no instance in all my experience where one cubic foot of rock has been sold from trench work. I never heard of it.

Q. Now, the price which the owner of a low lying lot would charge for the privilege of dumping thereon

45131 is much less than that which you would have to pay for the dumping from a dock?

A. We have often paid a little more in low lying lots, because it was cheaper on account of saving a long haul to the dump. We might have to pay fifty cents at the dump and it would cost fifty cents to cart, and if we get a low lying lot owner it would cost us perhaps sixty cents to dump and maybe not more than twenty cents to cart.

Q. Now, coming to this rammer, which you made reference to yesterday, and which has a circular end about six inches in diameter—

A. Five and three-quarters.

45132 Q. Five and three-quarters, to be exact. You do not pretend that you ram down the earth on the lower section of the main as it lays in the trench, do you, with this?

A. No, sir.

Q. That is only for pressing or pounding down the earth which is left in the main on top of the pipe?

A. We use the tamping bar—we use the rammer after we are through with the tamping bar.

Q. Which is this?

A. This is the rammer. The tamping bar is used first.

Q. In cutting your trenches, do you give them that width which is necessary to care for the caulking of the bell, or do you make a larger opening at that point?

A. We do not use bell holes in work in New York City, and especially on avenues. There are so many drip pots and different fittings to go in, that we have the trench wide enough to do the caulking without allowing for bell holes.

Q. And that enables you to take off the many other 45134
connections you have to form the mains, without making additional width of trench for that purpose?

A. You mean for the service connections?

Q. Yes?

A. Yes, sir.

Q. Now, referring to these drawings, showing cross sections of various streets and taking, just for example, Complainant's Exhibit 288, being Broadway, at Morris Street, looking north, I note here a section marked 31, which I take it is of the subway?

A. It is of the Rapid Transit Subway.

Q. And between the top of the subway and the surface of the street I note two circular sections marked 45135
7 and 9, which in the reference index it states are "gas mains"?

A. Yes, sir.

Q. I also notice a section of a pipe lying almost to the bottom of the subway, marked 1, and in the reference index being marked as a "sewer"?

A. Yes, sir.

Q. The Gas Company's mains did not in those instances go under that sewer, did they?

A. No, sir.

45136 Q. Are the mains in their present position the same as before the subway was built?

A. No, sir. That whole thing was rearranged when the subway was built, rearranged by the contractors for the subway.

Q. And at their expense?

A. At their expense.

Q. Taking, as another example, Complainant's Exhibit 289, Sixth Avenue and 14th Street, looking north, I notice a section marked 7, which on reference to the key, I see, is "Consolidated Company's gas

45137 mains"?

A. Yes, sir.

Q. I notice in the middle of what I take to be Sixth Avenue a section marked 19, which by reference to the key I see is a "four-foot sewer"?

A. Yes, sir.

Q. I think I am right in tracing this gas main so that the same runs over the sewer, do I not?

A. Yes, sir. But you can see if a main were carried out on a straight line it would come to the middle of the sewer. We do not go under a sewer where it is possible to go over it.

Q. There is no doubt about that. Now, in many

45138 of these cross sections, these drawings, in fact, in almost all of them, I notice either cross sections of the Rapid Transit subway or conduits for the Metropolitan Street Railway system, or pillars, that is the foundations for the support of the elevated railroad columns; I take it that neither the subway nor the conduits for the street railway system were built prior to the time when most of the mains of the Consolidated were in the ground, and your mains had to be removed when these structures were built; is that a fact or isn't it a fact?

A. It is a fact.

Q. And when they were removed it was at the expense of the contractor of the company putting in the subway or the railroad?

A. Yes, sir.

Q. You have placed in evidence certain photographs and made a statement relative to the size of various openings, which you have measured, and which you have stated were made for the purpose of putting down some of the mains for the new salt water system?

A. Yes, sir.

Q. Taking up the first of these, Third Avenue and 45140
14th Street, west side, the width of cut is given as nine feet, whilst the size of the main is but twenty-four inches?

A. Yes, sir.

Q. You do not contend that in laying the twenty-four-inch mains that a cut to the width of nine feet would be necessary, do you?

A. It was in that case.

Q. At this specific point?

A. Yes, sir. You can see down the entire block there. It is all the same; in fact, it goes from 14th way down to 11th Street the same way.

Q. Well, I cannot see very far, and in the little 45141
distance I see it very soon becomes much shallower, right under the truck, which is marked with the name of a roofing company. I think it is considerably narrower.

A. It may look narrower, but it is the same width all the way down. I went over it all the way and picked out a typical part. I did not pick out an extreme part or a narrow part; just an average part.

Q. Did you find any parts of that trench which were less than nine feet?

A. There were parts which might have been less

than nine feet, but there were many places where it was over nine feet.

Q. And if you had continued you might have found trenches for the 24-inch main, which was considerably less than nine feet?

A. I didn't find any.

Q. Did you go to any of the places pointed out by Mr. Edgerton as having the width of trench which he testified to?

A. No, sir.

Q. You have no reason to believe that the trenches were not the width he indicated, have you?

45143 A. I don't believe that it would show the trench that had to be repaved that he indicated. It might have been the trench that the contractor dug, and in that case I have given the maximum, which shows the trench might be two feet wide on the job, and yet the contractor might have to pay for six feet of paving before he gets through. I mean in those two photographs I presented?

Q. So these photographs in this detail simply have reference to the paving which has to be done, and not to the width of trench which would have to be dug to instal the main?

45144 A. Oh, I beg your pardon, it refers to the width of the trench.

Q. Are you prepared to state that this trench at Third Avenue and 14th Street, Complainant's Exhibit 271, was dug nine feet wide?

A. Yes, sir.

Q. For the purpose of putting the twenty-four-inch pipe therein?

A. Yes, sir.

Q. Did you see that trench when it was open?

A. I did, sir.

Q. And what was the condition of the excavation?

A. There were two or three mains in the way that had to be moved, and in moving those mains it was necessary to make a wide trench. Just what I have been testifying to: you cannot find a place in New York where you can dig down where you do not have to widen your trench out.

Q. And that is the reason these are all wide?

A. Yes, wherever they go down they have to move subsurface structures, and therefore must have a wide trench.

Q. If it happened the entire street were filled with mains, and you for some reason desired or it was 45146
necessary for you to put your name in the position occupied by someone of those, it might be the entire street would have to be ripped open so as to move them around to fit yours in?

A. It might be, yes. In fact, it was so on some of the avenues where the Rapid Transit went, that they could not have rearranged the pipe system unless they had the whole thing open.

Q. You have stated these are all for salt water mains?

A. All salt water mains.

Q. Will you show me any one of them that is in the middle of the street? 45147

A. I don't know whether I can show you one of those, but I have got some of the others that are in the middle of the street. I have got some photographs taken.

Mr. Mathewson: There is one down the middle of the street.

Mr. Kirby: I am asking as to these which are in evidence, and he shows me the one marked Fifth Avenue, Complainant's Exhibit 280, and that is the one which is nearest the middle of the

45148 Colin C. Simpson, Cross.

street of the photographs which have been marked in evidence.

The Witness: Yes, sir.

Q. Is it not a fact that in putting down the salt water system this happened in many instances, that the streets have not had the pavement removed for a considerable period after the trench had been filled in?

A. The pavement removed?

Q. The pavement replaced?

A. Yes, sir; in a great many cases.

Q. And that, I think you have already testified,
45149 has resulted in the edge of the asphalt, or whatever the pavement is, being worn or so that the necessity of replacing a larger width has occurred, where, if the asphalting had been done at once, the width would have been less?

A. Yes, sir.

Q. You made reference to the laying of certain large mains, I think it was on 126th Street?

A. Yes, sir.

Q. Do you know how long it took to lay that main?

A. How long it took? Well, you mean from the commencement of the work to the finish of the work?

Q. Yes.

45150 A. It took practically, as I remember now, I should say, about three or four months, the greater part of the summer.

Q. And do you know how long it was after that trench was filled that it was repaved?

A. I don't exactly remember. I know it would not have been very long, because we do not allow a trench to remain unpaved very long.

Q. Do you do your own paving?

A. No, sir.

Mr. Mathewson: He refers to the temporary pavement we have to put over the trench.

Q. Do you put a temporary pavement over the trench?

A. Yes, sir.

Q. I do not have reference to that. I mean the replacing of the asphalt so the street would be in the condition it was in before you put down your main. Have you control over that?

A. Yes, sir.

Q. And what control is it that you have over it?

A. We send to the Asphalt Company that has the contract for the street, and if they do not come at the time we send for them again and look them up again. 45152

Q. And they charge you for the actual area replaced?

A. Yes, sir.

Q. Are you familiar with the character of pipe which is put down for the salt water system?

A. Yes, sir.

Q. What kind of pipe is it?

A. Cast iron.

Q. What kind of joints?

A. Hub and spigot.

Q. How is it caulked?

A. The same as gas pipe is caulked.

Q. It is laid by contract, is it not? 45153

A. Yes, sir.

Q. Do you lay most of your mains by contract?

A. No, sir.

Q. Do the work yourself?

A. Yes, sir. The only mains we have ever laid by contract since consolidation are the larger sizes, 30's and 36's, and 24's and one 20 inch.

Q. You have spoken of the price of lead, Mr. Simpson, is it not the fact that the price of lead varies often and greatly.

A. I don't know whether you call it varying, it is going up all the time; it never seems to go down.

45154 Colin C. Simpson, Cross.

Q. It has been higher than it is today, has it not?

A. Well, it might have.

Q. Was it not higher within the past six months than it is today?

A. I do not think so.

Q. Have you any record, Mr. Simpson, showing the actual depth of all your mains?

A. Yes, sir.

Q. Have you ever figured out the average depth of those mains for the different sizes of pipe?

Mr. Mathewson: You mean below the top of

45155 the pavement.

Mr. Kirby: Below the top of the pavement.

A. I have had no need to figure; I have known it all along. I have seen them all, or practically all, and have been for so many years familiar with them that I know it without figuring it out.

Q. And so when you gave that depth, you refer to the ordinary laying of that main or pipe, and not to such instances where it would have to go over or under or around obstructions.

A. I am referring to an average depth. There are, of course many cases where the mains are far deeper than the average of two feet nine inches, and many

45156 cases where the mains are less than the average of two feet nine inches.

Q. So when you say two feet nine inches you take into consideration those cases where a main may have had to go under a sewer at a corner?

A. Yes, sir.

Q. Or where it had to be dropped under a subway or something of that kind?

A. Yes, sir.

Q. And if that were twenty or thirty feet it might happen?

A. Yes, sir.

Q. Of course, it would make the average depth considerably more?

A. It would come in the average of two feet nine inches that I gave.

Q. If I understood your testimony correctly, you stated that you had examined some 90 per cent of the mains, not only of the Consolidated Gas Company, but of the other gas companies in the Borough of Manhattan?

A. Yes, sir.

Q. I understood you correctly?

A. Yes, sir. 45158

Mr. Mathewson: He said he had seen them.

Q. Or seen them, or inspected them.

A. Yes. They followed the same practice we did.

Q. Do you know how many miles of mains there are of the Consolidated Gas Company and these other companies?

A. Yes, sir.

Q. How many miles are there?

A. In Manhattan?

Q. In Manhattan?

A. In rough figures fifteen hundred, a little over fifteen hundred.

Q. Do you mean by that active mains, or mains in 45159
the street?

A. Active mains.

Q. Corresponding to the 795 or whatever figure it is?

A. That fifteen hundred miles, of course, includes the twenty-seven miles of disused mains we have; it is fifteen hundred and some odd miles; I can give you that exactly.

By Mr. Mathewson:

Q. That means excluding abandoned mains?

A. That means excluding abandoned mains.

By Mr. Kirby:

Q. But including the 27 miles of disused mains of the Consolidated Gas Company?

A. Yes, sir.

Q. You having today 795 miles of active mains?

A. Yes, sir.

Q. Mains actually in use?

A. Yes, sir.

Q. Have you ever laid your mains under the sidewalks in the uptown district?

A. No, sir. I have never laid them, but up until
45161 19 years ago the City did not allow any gas main or water main to be laid under a macadamized street and in every case they would compel us to go under the sidewalks, so up to some years ago we had quite a few streets where the mains were under the sidewalks. At the present time the only streets they are under the sidewalks for any length at all are on 72nd Street on the west side, 72nd Street on the east side, 124th Street between Mt. Morris Park and Third Avenue and part of 110th Street, and in Broadway they have been taken out and laid in the middle of the street. That is about all; and a short stretch on 116th Street, between Third and Fourth Avenue.

45162 By Mr. Mathewson:

Q. Did you mean laid in the middle of the street or under the sidewalk on Broadway?

A. They used to be under the sidewalk, but they are now in the street.

Q. You do not mean they are in the middle of the street?

A. No.

Q. Because the trolley cars are in the middle?

A. Yes. We have a small one in the middle of the street on Broadway, to supply the lamps.

Q. That is upper Broadway?

A. Upper Broadway, yes.

By Mr. Kirby:

Q. Can you give us approximately the mileage of your mains, or rather the number of thousand feet of your mains which go under sewer or other deep conduits in the street?

A. No, sir, I could not. It would not amount to very much in mileage, because where we have to go down, we come up again as soon as we can.

Q. Are those instances many?

A. They are getting more every day; I think you will find in my testimony I have testified that at the present time we are unable to cross avenues with any 45164
large size pipe without going down very deep.

Q. Those instances would likely be impressed upon your memory, would they not, where you have had to go down?

A. Yes, sir; some of them.

Q. Now, in your estimate for excavating and other operations which go into the laying, you have figured that on the average depth of trench which you have used, have you not?

A. Yes.

Q. And that is true of excavation for such deep holes as might have to be made to carry your gas mains under sewers and the other obstructions? 45165

A. In connection with the larger sizes?

Q. Yes?

A. Yes, sir.

Q. Am I not right in assuming that at such point the cost of excavation is very heavy and the deeper down you go the greater the cost?

A. Yes, sir.

Q. And more handling of dirt and rock and such things?

A. Yes, sir.

45166 Colin C. Simpson, Cross.

Q. Taking up the troubles which you have referred to occurring in your stand pipes or risers or street lamps during cold weather, will you tell me what is the cause of trouble in gas pipes when cold weather comes?

A. What is the cause of trouble?

Q. Yes, what does the cold do?

A. The cold, well the actual visible trouble is a formation of what looks like hoar frost inside the pipes, and if the cold continues this hoar frost gradually works towards the center and at last closes the pipe up altogether.

45167 Q. And what enables that hoar frost to form?

A. What enables it to form?

Q. Yes, outside of cold. Is it moisture contained in the gas?

A. I suppose it is moisture in the gas.

Q. Could it be anything else but moisture?

A. I do not think so.

Q. It is not an unusual and uncommon hoar frost, it is the same as that which you would find where there is moisture present and cold comes in contact with it?

A. Yes, sir.

Q. If there were no moisture present are you of the opinion that there would still be hoar frost formed in

45168 these pipes?

A. I do not think I am competent to answer on that; I am not much of a chemist.

Q. It would seem reasonable to you, would it not?

A. Any answer I would give you would be pure guessing.

Mr. Mathewson: He is not a chemist and is not a manufacturer of the gas. He simply observed conditions.

Mr. Kirby: It is not a question of chemistry.

Q. Do you have this trouble from the stoppage of flow of gas, which it ultimately amounts to, I presume,

at the time of great cold, or at the time of a thaw immediately after a cold spell?

A. We have it—the trouble you are talking about we have at the time of great cold. There is another trouble develops at the time of thawing which is another trouble altogether.

Q. What is that trouble?

A. The trouble at the time of the thaw is with this condensation or I mean this hoar frost thawing out, and if the pipe is at all trapped, collecting in the trap of the pipe and sealing the gas off. There might be enough hoar frost form in the pipe to seal a trap in 45170
the pipe, and yet it might not be formed all the way to the center, so as not to let the gas through so we find that in hundreds of cases.

Q. Do you ever find your risers frozen solid at about a point where they leave the earth?

A. Frozen solid?

Q. Yes. After a thaw, that is, does the hoar frost ever develop, and water run down, and striking the cold earth, freeze at that point?

A. No, sir.

Q. Then the trouble during a thaw is when it comes from a trap filling up and in a way choking up—

A. Sealing off the gas. 45171

Q. What happens to these—

By Mr. Mathewson:

Q. Would not an elbow effect the same result, or I suppose any sort of a bend?

A. No, the pipe has got to be trapped, you know. If there is a fall all the way back to the main, of course, it would not stay there. The best evidence of that, you know, we pour in alcohol in the lamp stand pipes to thaw the hoar frost out, and it runs back into the main.

45172 Colin C. Simpson, Cross.

By Mr. Kirby:

Q. Do you use alcohol to remedy trouble of this kind?

A. Wood alcohol.

Q. You do not use anything else?

A. If the wood alcohol does not work, we use a rod very often.

Q. Never use salt water?

A. No.

Q. What happens? You have spoken of these traps, as I understand it, if at various points along the
45173 main there is a trap placed for the collection of moisture which precipitates in the service pipes or in the mains, it flows back to the main, which has a slight dip and which will carry it back to the trap; am I right?

A. No, the traps are things which should not be there; we don't know of them until this thing happens and the service pipe seals off or the lamp seals off after a frost. We know there is some stoppage or that these traps are sealed with water.

Q. You do not mean an intentional trap?

A. No.

Q. But by reason—

45174 A. Of the settlement of the ground or something, a trap is developed in the pipe.

Q. Do you have intentional traps in various parts of your distributing system?

A. We have drip pots on our main system and in some cases where it is impossible to have the service drip back to the mains there are house drips, as we call them, in the house.

Q. What is the purpose of these drip pots?

A. To take care of the moisture in the gas, the condensation.

Q. What happens to the contents of these drip pots in cold weather?

A. Nothing happens to them.

Q. They are pumped out?

A. We pump the drips summer and winter. Men are going around all the time pumping them out. The house drips are taken care of by shopmen, who go around and empty them. They have records of them and take care of them.

Q. And this is done through all the months of the year?

A. Yes, sir.

45176

Q. They do not freeze up in the winter so they cannot be pumped?

A. I have known cases of their freezing up, certainly.

Q. But it is an exception and not the rule?

A. The exception.

Q. Now, have you a record in your department showing the number of complaints or troubles of street lights which are out during the various months of the year?

A. Well, we have it—could be got up in some way, I suppose. We do not keep any separate account of the number that are out.

45177

Q. Can you tell the number of street lights which were out and the number of hours thereof during the month of January, 1904, and also the month of January, 1905?

A. We could find it out easy enough.

Q. You have not that data at hand?

A. I have not that data at hand.

Q. Nor a comparison for any other two months?

A. No, sir.

Q. Mr. Simpson, in measuring the distances as laid down on these insurance maps which your com-

pany uses to plot your mains upon, didn't you measure from say, the corner of an avenue and one street to the corner of another avenue and another street distant several blocks therefrom, or did you only measure the length of the block from one corner to the next corner without crossing the street?

A. I took several kinds of measurements. Some cases I measured across the entire page and took the differences as given by Mr. Marks from point to point, as given by him on this sheet, and I compared that with the official record. In other cases I took just
45179 single blocks also as given by him.

Q. And did you find that these maps were correct in the width of their streets?

A. I did not measure it at all to see if they were the correct measurements of the street.

Q. You have made certain criticisms of Dr. Marks' statement of distances, using as an illustration a length of pipe running around a block and saying, very properly, that if that pipe is distant six feet from the curb, it is greater in length than one which is only distant three feet from the curb. As a matter of fact, pipes are not laid in that way, are they? They are running in straight lines down an avenue or across a street?

45180 A. Either I do not understand you, or you did not understand me. I said that wherever the pipe ended at an intersection or a street, that in every such case his measurement must be wrong, because that pipe, neither on the avenue nor on the street was put down to scale.

Q. Have you many pipes which simply run a block or two blocks?

A. Do you mean many pipes that end at a certain point, like I am talking about?

Q. Yes.

A. Thousands. You can see them at one glance

at the volumes; there is not a page where you will not find several instances.

Q. Did you calculate the number of feet which instances of that kind would make?

A. No. I took a few instances and the actual distance from the curb, and the distance as given apparently in the volume.

Q. It would make only a very few feet on each block, would it not?

A. It might amount to—it depends entirely on how that is laid down on the map and how far it is from the curb.

45182

Q. It could not amount to more than the distance of the mains as actually in the ground, that is the distance from the curb as the main is actually laid, and the distance from the curb as assumed by Dr. Marks?

A. It would amount to this difference, that if his volume shows that main ending at three feet from the house line and, as a matter of fact, that main were ten feet from the curb, as they frequently are, it would make a difference of ten feet less three, plus the width of the sidewalk, in every case.

Q. And instances where pipes are laid in that way, compared with the total length of pipe in the city, are very small, are they not?

45183

A. The cases that I am talking of—are you talking about the number of instances of that kind?

Q. Yes.

A. As I said before, there are thousands of them in those volumes.

Q. The number of instances brought down to the number of feet of pipe represented by those instances?

A. What the difference would be I could not say. It would be a tremendous calculation. It might amount to hundreds of thousands of feet, and might only amount to a few thousand.

Mr. Kirby: That is all I have to ask Mr. Simpson.

The Master: Mr. Burr, you may cross-examine.

CROSS-EXAMINED BY MR. BURR:

Q. Referring, Mr. Simpson, to Complainant's Exhibit 280, and the other purporting to be a diagram showing the situation at various points regarding the number of substructures in the streets, are you sure the scale of feet as given here is correct?

A. I will not say that I am sure.

15185 Q. But I think you said yesterday that from your own knowledge you knew of the situation at various points described on these diagrams?

A. I said from my own knowledge I knew of the situation in a general way. I am not familiar with every detail of it, of course.

Q. Are you quite sure there are thirteen gas mains at Broadway and Bleecker Street, as appears on this exhibit, Complainant's Exhibit No. 280?

A. That is counting the mains on Bleecker Street and the mains on Broadway.

Q. I am speaking of the situation of the locality as it appears on that diagram?

15186 A. This shows the mains on Bleecker Street and the mains on Broadway.

Q. Well, do they not number thirteen?

A. They evidently do, thirteen, yes, sir.

Q. Some of those are the mains of the old companies that existed as long ago as 1823?

A. I doubt it very much.

Q. Well, take the Mutual, how long had those mains been in the ground?

A. The Mutual dates back about, I think to 1872.

Q. And the Equitable?

A. The Equitable dates from 1883; they started laying mains then.

Q. Can you give the sizes of the mains at that point?

A. Do you want me to call off the sizes?

Q. Yes.

A. One four-inch, seven six-inch and five eight-inch.

Q. The column headed "Reference" on each of these diagrams is explanatory of the location of the various mains, and so far as the gas mains are concerned, to your knowledge it states accurately the size of the mains?

A. Yes, sir.

Q. What points in the street are there to your 45188
knowledge and from your experience where there are a great number of gas mains conveging than thirteen?

Mr. Mathewson: At a single corner, I suppose?

Mr. Burr: I said converging at a single point.

A. You mean taking a street and avenue together?

Q. Yes.

A. Third Avenue and Forty-second Street.

Q. How many on Third Avenue and how many on Forty-second Street at that point?

A. Ten on Third Avenue—nine on Third Avenue and seven on Forty-second Street. 45189

Q. That is sixteen at that point?

A. Yes, sir.

Q. How many of those were laid, if you know since the subway was built?

A. The Rapid Transit Subway?

Q. Yes.

A. None.

Mr. Mathewson: That does not go to Third Avenue.

Q. There is no subway at that point is there?

A. No.

45190 Colin C. Simpson, Cross.

Q. How many of them have been in the street at that point since 1865?

A. In 1865 there would be two on the street and two on the avenue.

Q. What size were those mains?

A. There was a Metropolitan twenty-inch on Forty-second Street—there was at that date; of course, it has been changed since that time; and a Metropolitan four and a Metropolitan six on the avenue and a Metropolitan on the north side of Forty-second Street at that time; that is in 1865.

45191 Q. Yes. Now, when the frost penetrates into the ground say four feet, does it in addition to affecting the mains affect the service?

A. Yes, sir.

Q. How far—

A. I won't say in addition, because I have never yet known of a case of a main being what you might call affected by the frost, not stopped or anything.

Q. A main is not affected?

A. No, sir.

Q. I understood you to say that hoar frost gathers about it. Were you speaking of pipes and not mains?

A. Yes, sir, service pipes. Of course, if the cold
45192 snap is prolonged enough it would eventually stop up a main, too, I suppose, if it kept on; I don't know. In the case of the smaller services it stops up.

Q. The service pipe runs from the main through the building line to the house?

A. Yes.

Q. How much inside of the building line does the service pipe run?

A. We run generally three feet.

Q. That then connects with the meter?

A. Yes.

Q. And I suppose that the effect of the frost is felt outside the building line and not inside of it?

A. It is felt inside the building line if the pipe is not protected, or if it is exposed to cold weather.

Q. After you put the service pipe in you never take it out, do you?

A. After we put the service pipe in we never take it out?

Q. Yes.

A. Yes, very often.

Q. For what purpose?

A. If the service shows any signs of wear we put 45194
new pipes in, or they might want a larger pipe, and we take it out and put in a larger one.

Q. But you do not take it out because a man changes from gas to electricity, do you?

A. No.

Q. It is practically left there forever, as long as it is serviceable?

A. Yes, sir.

Q. When did you first see the maps to which reference has been made, and from which Dr. Marks took his measurements?

A. When did I first see them?

Q. Yes. 45195

A. In 1889.

Q. Had there been a series of maps in existence before that time?

A. Yes, sir.

Q. What became of those maps?

A. I could not say.

Q. Do you know why new maps were procured?

A. Yes, sir.

Q. Why?

A. I took charge as general superintendent of mains and the system of maps they had then was a sepa-

rate map for each of the old companies, comprising the Consolidated Gas Company, and I thought it better to have them in this form that we have them now.

Q. And then these maps were made under your supervision?

A. Yes, sir.

Q. And of course you intended that they should be as accurate as it was possible to make them?

A. As far as pointed to scale is concerned.

Q. In every respect?

A. No, sir, I intended—

Q. You did not—

Mr. Mathewson: Let him finish his answer.

The Witness: I intended them to be accurate as showing our main system by the size and the streets on which we had mains, but did not make any attempt or give any orders that the main should be put on there to scale, or for them to adhere to the right distance from the curb.

Q. Did you give positive orders not to do that?

A. No, I did not.

Q. Whom did you employ to make these maps?

A. One of my draughtsmen, a man named St. Aubyn who is now in Philadelphia.

Q. How long were they engaged in making the maps?

A. It took him, I should say, about seven or eight months.

Q. How many maps are there altogether?

A. Eleven in Manhattan and the Bronx—twelve.

Q. That is, twelve volumes of maps?

A. Twelve volumes, yes, sir.

Q. How many individual maps are there?

A. Oh, I don't know. I never counted them.

Q. Three hundred or fifty or four hundred?

A. No, there must be a thousand, I should think, must there not?

Q. You remember when Dr. Marks testified here and had marked for identification the maps of mains or schedule of mains which he prepared from your maps, as he testified?

A. Yes.

Q. And immediately thereupon a copy of that schedule of mains was handed to you through Mr. Mathewson?

A. No, sir. I have never seen anything but that schedule which we had in court here. 45200

Q. That is what I am speaking of.

Mr. Mathewson: That is Exhibits 92 to 103?

The Witness: It was never handed to me at all. I sent down here and asked Mr. Mathewson if I could look through them and check them up, and I sent down here for them.

Q. And you got them?

A. Yes, sir.

Mr. Mathewson: But he did not get them immediately after they were in. I think it was adjourned before Christmas. I have had them, there is no doubt about that, and I have had them here for cross-examination of witnesses, 45201
but you asked him if he got them as soon as they were put in, and I say he did not and he says he did not.

Q. How soon did you get them after they were put in?

A. It might be two days, possibly three days.

Q. How long were you engaged in comparing them with the maps in your possession?

A. How long?

Q. Yes.

A. Well, off and on ever since.

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Q. That is about how long, a month?

A. Well, some days we did not do anything with them at all and other days we did; I couldn't give the exact time.

Q. Well, it is about a month since you received them?

A. I suppose it is about that.

Q. And you have been engaged in comparing the schedules as prepared by Dr. Marks with the actual maps in your possession, off and on ever since, as I understand you?

45203 A. Off and on, yes; not continuously.

Q. And I understand you to say yesterday, at that you had only succeeded in comparing about 20 per cent of the schedules made by Dr. Marks?

A. That is all.

Mr. Mathewson: He said he had compared 20 per cent, not that he had succeeded only in comparing 20 per cent.

Q. That is the point, that although you tried to do more, it was all you were able to do?

A. No.

Mr. Mathewson: He did not testify that at all.

The Witness: I only did what I wanted to do.

45204 I looked to see what kind of errors were made, and when I found a bunch of errors on something, I stopped on that and went to some other kind.

Q. Have you read the testimony of Dr. Marks at all in regard to these maps?

A. Yes.

Q. Do you recall his testifying that before the maps were measured that the scale was proven?

A. I remember his testifying something about the scale; just what it was I don't remember.

Q. Have you got a volume of the maps here?

A. Yes, sir.

Q. Will you produce Volume 6?

Mr. Mathewson: Dr. Marks expressly testified that the scale was not proven, and that he did not test it by any official maps at all.

(Volume produced by the witness.)

Q. Take the map—what does this 111 mean?

A. Page 111.

Q. What does 107 mean?

A. No, that means 111 is a continuation of that.

Q. This is page 107, Volume 6 of the maps?

A. Yes.

Q. Where does the scale appear? 45206

A. Here (indicating).

Q. Will you measure it?

A. Measure the scale?

Q. How did you determine the accuracy of the scale?

A. I took, for instance, from that point to that point (indicating).

Q. From the line marked East Fifty-second Street?

A. It does not make any difference; say from that point to that point (indicating).

Q. From the top to the bottom of the map?

A. Yes. I then compared it with the scale to see how much it gave me according to that scale there, 45207
and then I compared that with the official record.

Q. Now, this map is done in colors?

A. Yes, sir.

Q. Do you know what the various colors represent?

A. Yes, sir.

Q. What do they represent?

A. Various sizes of mains, that is an eight, that is a six, that is a four, that is a sixteen, that is a sixteen, that is an eight and that is an eight and a six and so on (indicating).

Q. But the buildings are all colored, also, every building, every piece of real estate is colored?

A. Yes, sir.

Q. What does that mean?

A. That is done by the man who provides the maps, to indicate different kinds of buildings. That pink there indicates a brick building, the yellow you will find indicates frame buildings, and those are frame buildings there (indicating); and that indicates a tenement house or an apartment house or a flat. Those are private residences (indicating).

Q. And as each piece of property changes, it is changed in your map, is it not?

A. Yes, sir.

Q. What is the object of keeping this so thoroughly with regard to the houses and apartments and buildings?

A. What is the object?

Q. Yes.

A. Well, because this is a map for reference.

Q. Well, in other words, you, I understand, Mr. Simpson, follow up the buildings in the City of New York for the purpose of introducing the gas, do you?

A. Yes, sir.

Q. And do you consult this map or any other book?

A. No, sir, we have men out in the district to do that, and this is done by the people who sell you the maps.

By Mr. Mathewson:

Q. What is done?

A. This posting on alterations to buildings.

Q. That is, indicating the character of buildings?

A. Yes, sir. If a building—for instance, this is pasted on now (indicating). They come once a month and paste in all the changes in the buildings.

By Mr. Burr:

Q. And you, I understand, keep in touch with the Building Department, and keep in touch with all the new buildings that are going up and make your gas connection at the proper time with each building?

A. Yes, sir.

Q. That is done throughout the whole island of Manhattan, is it not?

A. Yes, sir.

Q. Now, then, you have this system of coloring to show the character of the mains in each street?

A. Yes, sir. 45212

Q. As it appears upon each one of these maps?

A. Yes, sir.

Q. Can you tell offhand what these various colors means as to the sizes of mains?

A. Yes, sir.

Q. Did you find in Dr. Marks' compilation of his schedule, as taken from these maps, any inaccuracy as to the duplication or triplication or quadruplication of mains in the streets?

A. I did not look at it at all, never thought about it.

Q. So you have nothing to say as to the accuracy or inaccuracy of his statement in that regard?

A. No, sir, nothing at all. 45213

Q. Now, when you abandon a main, or when you disuse a main, what do you do on this map?

A. We make an erasure. If this main here were to be abandoned, we would make a little erasure there and there (indicating), and write on it the year it was abandoned or disused.

Q. Can you point out in the series of maps you now have here in the Master's office the location of the seventy miles of abandoned mains which you have testified to?

A. Yes, I can, if you will have the patience to go through all the volumes.

Q. You could show that could you?

A. Yes.

Mr. Mathewson: Seventy-five miles that were abandoned above the 822?

The Witness: Yes.

Mr. Burr: Which is it, 822 or 795?

Mr. Mathewson: You know as well as I do; 822 includes the mains which were called active mains and those which were disused for some purposes exclusive of the abandoned mains, which were some seventy or eighty miles more. The
45215 testimony is that the abandoned mains included would make 880 or 890 miles, my recollection is.

Q. I notice here at this point, East Fifty-second Street, between Fifty-second and Fifty-seventh Street and Third Avenue, on Third Avenue, there are how many mains, four, five?

A. Five, yes, sir.

Q. These breaks in the line showing the main, has that any particular significance?

A. It indicates the system.

Q. The system?

A. Yes, sir.

Q. It indicates the company to whom the mains
45216 belong?

A. Yes, sir, before consolidation.

Q. Take Third Avenue at this point, can you tell offhand by the coloring there, and the appearance of those lines what mains they are and what companies they belong to?

A. Yes, sir, that is a six-inch Metropolitan.

Q. The red line?

A. The red line. That was a six-inch Knickerbocker.

Q. That is the yellow?

A. Yes, but made a Metropolitan; that is a sixteen inch Municipal.

Q. One is orange and the other is yellow?

A. No, they are supposed to be the same color. That is an eight-inch Municipal and an eight-inch Metropolitan.

Q. The eight-inch Municipal is the blue line?

A. They are both blue lines.

Q. And the other one is what?

A. Metropolitan.

Q. Now, you read Dr. Marks' testimony that within the time allowed him he had these mains measured by means of a steel tape upon each map?

A. Yes, sir. 45218

Q. And you heard him testify that so far as these corners to which you have referred are concerned, he got the dimensions of those corners through curving the steel tape?

A. No, sir; he did not say that at all. He said where there wasn't a straight line that he curved his tape, put it on edge that way; for instance, if that main went around that way in a curve, he would place his tape on edge like that (indicating).

Q. Well, it would be possible to get the dimensions of the curves by standing the steel tape on edge, wouldn't it?

A. No, sir, because that curve is not drawn to the scale. 45219

Q. Assuming that the scale was all right?

A. Assuming these mains were put in to scale, you could get it, but that curve from start to finish might be one hundred feet or twenty feet, the length of the curve.

Q. And I understand you to say that when you make a change in the main you report to the head office and there shortly after it is entered in the books, that is the system, and from the books it is entered in the maps?

A. When a main is laid or any alteration made, it is sent to me and it is entered on the books and on the maps.

Q. Do you remember when your attention was first called to this matter of the mains you testified on page 538 of the record that those maps correctly set down the exact situation with regard to the mains?

Mr. Mathewson: Suppose you let him see what he did testify to.

Mr. Burr: I will read it. You were asked:

"Q. And it is part of your duty, is it not, to keep a
45221 record of what work is done upon every main in every such street? A. Yes, sir.

"Q. And for that purpose you must have a very accurate record of the work that is done on such mains? A. It is not kept in detail in the way you mean. I get the pay roll every week and it is entered up in the pay roll what is expended for new mains, repairs, overhauling and so on, subdivided under those headings.

"Q. I understood you to say you had a map showing accurately the whole system of mains in the City of New York? A. We have maps showing the entire system of mains on the Island of Manhattan be-
45222 longing to the Consolidated Gas Company, one system of maps.

"Q. And have you another system showing the mains of the other companies? A. We have copies of maps of theirs, or of maps we made ourselves before the other companies were consolidated.

"Q. So taken together for your proper information you have a complete record through these maps of every main in the streets of the City of New York? A. Yes, sir; every gas main.

"Q. Every gas main, that is the only main I am speaking of? A. Yes, sir."

Mr. Mathewson: All of which is so, but he does not say they are drawn to scale.

The Witness: This is an accurate map we have of our system of mains. It does not say it is drawn to scale.

You were asked:

"Q. Where is that series of maps? A. In my office."

A. Yes, sir.

"Mr. Mathewson: These were the ones that weighed a quarter of a ton, that Senator Page asked me about. 45224

"Q. Does that map show the date of the putting down of each main? A. No, sir; no dates at all.

"Q. In order to understand that map one would have to possess the book which you have with this accurate record you spoke of? A. No, not to understand it. If you wanted to get the distance from the curb and the depth you would have to have the book."

A. Exactly.

Q. So that with that exception these maps are accurate?

A. Yes, sir.

Q. How is it that you testified yesterday that in every instance you examined these maps the scale is 45225 defective?

A. I am not saying for one minute that they are drawn to scale. I continued to tell you that they are not drawn to scale.

Q. Do you wish the Court to understand that all these maps are inaccurate in the scale of feet as shown?

A. These maps are absolutely correct as showing on any one street what gas mains there are belonging to the Consolidated Gas Company. I never pretended that they showed the distance from the curb or the

length of main there was there, but if this map shows, as it does here, that there are two six-inch mains on Fifty-fifth Street between Second and Third Avenues, that is absolutely correct; there is not a main on these volumes that should not be there.

Q. I notice on this map on page 107 there is a scale of feet given?

A. Yes, sir.

Q. And also a metric scale?

A. Yes, sir.

Q. Decameters and hectometers?

45227 A. Yes, sir.

Q. Do you wish to be understood as saying that both these scales are inaccurate.

A. I have not bothered with that at all. I am using the one used by Dr. Marks.

Q. The one you have used is inaccurate?

A. Yes.

Q. And every scale of feet you examined in your examination of 20 per cent of Dr. Marks' work you found to be inaccurate and against the company?

A. Yes

Q. Short?

A. Yes.

45228 Q. And do you now say that every scale of feet on these maps is inaccurate and short?

A. No, sir.

Mr. Mathewson: He says he has examined 20 per cent. How can he say as to the others? The presumption is that they are.

Q. Did you ever examine the scale of feet of these maps prior to the examination you have made because of the schedule of mains given by Dr. Marks?

A. No, sir; I never had occasion to. I never used these maps for getting distances or anything of that kind. Never dreamed of doing it.

Q. These are kept at the main office of the company?

A. These are kept at the main office of the company for nothing but ready reference, showing the size of mains on a street and the side of the street they are on. That is purely all they are for.

Q. I thought you said, in your direct testimony, when you were first questioned about these, or Mr. Mathewson did in your presence, that it would take six months to make a copy of these maps?

A. A copy? I don't remember of speaking of making a copy of the maps.

45230

Q. Don't you remember we asked for these maps when you were first on the stand?

A. Yes.

Q. And they were referred to as weighing ten tons, and that it would take six months to examine them?

Mr. Mathewson: Half a ton, do not make it ten.

Q. Do you remember being asked about the seventy miles of abandoned mains, Mr. Simpson, when you were first examined on this inquiry, and that you testified then that there was no way that you could tell where the seventy miles of abandoned mains were located?

45231

A. No, sir, I said it could be picked out, but it would take a long time.

Mr. Burr: I will continue my examination after recess.

At 1 P. M. adjourned for recess until 2:15 P. M.

After recess.

Q. What do you say was the total difference in feet between your measurements and Dr. Marks' schedule?

A. You mean to start with, before we found any errors?

Q. Yes.

Mr. Mathewson: Mr. Simpson's was not by measurements. He gave no measurements.

A. I just take Mr. Marks' testimony, that is all. Professor Marks, in his testimony allowed us 3,802,282.90 feet of active mains, and 230,630.40 feet of disused mains, making a total of 4,092,913.30 feet against our total of 4,344,849.00 feet.

Q. That would make a difference of how many
15233 thousand feet. Something like 251,936 feet?

A. 251,935.70 feet. And from that should be deducted though, the 29,111 feet that Mr. Marks allows for the Bronx.

By Mr. Mathewson:

Q. That 29,111 was not in his total?

A. No, he allowed it for the Bronx, but did not put it in his total. Leaving 222,824.70 feet.

By Mr. Burr:

Q. Now, is that your understanding of the only difference between Dr. Marks' figures and yours with regards to these mains? That is the only difference between your claim and his figures, as to mileage?

15234 A. Yes, sir.

Q. How many miles would that represent?

A. Do you want it roughly or exactly?

Q. Roughly.

A. About between forty-three and forty-four miles.

Q. Now, you have stated that you have found from an examination of the maps that there were five maps omitted?

A. Five maps omitted.

Q. What maps were they?

A. Pages 118, 119, 120, 121 and 122 of Volume 6.

Q. How many miles do they represent?
A. 24.25.
Q. And the total was forty-four miles?
A. Forty-four, yes, sir.
Q. That makes a difference of twenty miles?
A. Yes, sir.

Mr. Burr: Now, in all fairness, it is proper I should say that we have found that Mr. Simpson is correct in that regard; that we did omit five maps. The young men who had the compilation had them on their original notes, but in some manner or in some way due to the magnitude of the 45236
thing they omitted those five maps, and it is only proper to say that; but you will appreciate the great undertaking Dr. Marks tries to accomplish in taking the measurements of this vast number of maps.

Q. Now, the accountants' report, Mr. Simpson, is that December 31st, 1905, from the books of the company, there appeared to be 804.594 miles of mains (page 1449 of exhibits). I show you the statement as presented in that regard. I am speaking of the report of Marwick, Mitchell & Company, the accountants?
A. Yes, sir. 45237
Q. As it appears in City's Exhibit 87; is that correct?
A. I would not say offhand it is correct.

Mr. Mathewson: Of course, Mr. Burr, the main mileage as we had it out yesterday differs from you in that if we abandon a main that comes out and then the new main goes in and that represents those since the 31st of October, which was the date of our main mileage of 822; and December 31st, some mains had evidently been abandoned or cut off and other mains had been

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put in. Undoubtedly, that represents the difference.

Mr. Burr: What I would like to have clear is: is there any doubt that the mileage, as given by the accountants and taken from the books of the company as such mileage appears on that date, is correct?

Mr. Mathewson: I don't know. I don't think Simpson could tell offhand.

The Witness: I could not tell offhand. I will look it up.

45230 Mr. Mathewson: I will have Mr. Simpson or somebody else look it up and he can answer the questions.

Q. Now, Dr. Marks gave the total active mains in Manhattan as 731.49 miles by his measurements, and to that must be added, as I have already stated, the five maps omitted, 24.25, which would make a total of 755.74.

A. What about the Bronx.

Mr. Mathewson: That is the Bronx.

The Witness: No, he said Manhattan only.

Q. The Bronx is omitted from this?

A. No, sir. It is not included in Mr. Marks' total

45240 at all.

Q. Well, we will assume for the present that the Bronx was omitted from it.

(No answer.)

By Mr. Mathewson:

Q. That would make how much—five and one-half miles long?

A. About five and one-half.

By Mr. Burr:

Q. Then the total disused mains was 43.68; abandoned .05 which would make the total 799.48?

A. Yes, sir.

Mr. Mathewson: That is Mr. Marks' total?

Mr. Burr: Yes.

Q. And if you include the Bronx it makes 804?

A. Yes.

Mr. Mathewson: Always state whether it does according to yours, or does according to Mr. Marks' figures.

The Witness: According to Mr. Marks' figures the Bronx was not included, the 29,111 feet.

Q. And the 804 miles would be his total putting in the Bronx, and putting these five maps omitted in?

A. Yes. 45242

By Mr. Burr:

Q. I call your attention to City's Exhibit 91, as it appears on page 1538. You will see that Dr. Marks has given there for Manhattan 731.49; for the Bronx, 5.51; total, 737. So you will see he did not include in that 731.49 the Bronx.

A. I said he did not include them. He left it out.

Q. Your figures were 795?

A. Yes.

By Mr. Mathewson:

Q. And 24.25 would make 761.25 for his measurement of active mains?

A. There was a whole lot more things here that he did not get out. Here is a clear omission, you know. An omission in the schedules, eight miles alone. 45243

By Mr. Burr:

Q. Marwick & Mitchell give 804.59 as the number of miles in their exhibit, to which I have called your attention. Dr. Marks gives 731.49 miles in the Borough of Manhattan. He allows for the five maps omitted 24.25; total, 755.74; total disused mains, 43.68; abandoned, .05, making a total of 799.48, to which if you add the Bronx 5.51 gives 804.99, or exactly what Marwick & Mitchell gave.

Mr. Mathewson: That is the barest kind of coincidence. In these schedules Mr. Simpson has presented here there are miles more omitted besides that which he points out; besides those mains, whole blocks here and there.

The Witness: The one item of the scale alone would—

Q. Now, if before measuring the mains on the maps the correctness of the scale was tested and the measurement of the mains was made by a correct scale, that would make some difference in your claim as to the difference, wouldn't it? If the scale was corrected before the measurements were made?

A. I am absolutely convinced that if those maps were drawn to a scale and an attempt was made to measure the length from those maps I do not believe there is a human being in the world today could get the thing correct in less than six months' hard work.

Q. Of course, we did the best we could under the circumstances; you understand that, Mr. Simpson?

A. I suppose so.

Q. And you are now reiterating what I think you called attention to in the early part of your testimony, that it would take six months to measure these records and maps of mains?

A. I know I could not do it in six months.

Q. And did you take these examinations yourself of these corrections?

A. Some of them I made myself, on some of them I had the examinations made and attention called to them, and then checked them up after they were shown me. I may say I have all the volumes in court with reference to that matter there, and you may check up anything you may want to check up now.

Q. Have you any explanations to give as to why the maps do not agree, as you claim, with the scale given?

A. Yes, sir, because the man that made the maps explained to me that it was due at first to the shrinking of the paper, and then the ruling of the paper, pasting it on the linen back and ruling it.

Q. Making allowance for the shrinking of the paper it would be possible then to correct the scale?

A. No, because your paper shrinks one way, and your scale shrinks the other. You take a line running up and down the page, and your scale runs across the page so that both shrink differently.

Q. Who took the photographs of the trenches, or openings? 45248

A. The first one was taken by Mr. Fogg and the others were taken by Mr. Bennett.

Q. Who is Mr. Fogg?

A. Mr. Fogg is one of my engineers.

Q. Who is Mr. Bennett?

A. He is a gentleman connected with the Consolidated Gas Company.

Q. Have you a photographic department there?

A. No. We have a camera, a large apparatus, and we have three or four official photographers.

Q. Did you give any instructions to the photographers as to what you wanted him to do?

A. I did, sir; I told him to take photographs of 45249
certain localities showing exactly the conditions existing there.

Q. And you pointed out the spot you wanted photographed?

A. I did not point out the spot I wanted photographed. I pointed out the blocks.

Q. Well, for instance, where you photographed yourself you had pointed out that spot?

A. I stood on the spot myself, yes, sir.

Mr. Burr: I merely desire to impress upon the mind of the Master and to disabuse any im-

pression that might have been received from the statement yesterday that in all cases these things were against the company—Dr. Marks' figures, shortages, etc., that these maps were omitted. We find that the five maps omitted is the fact, and as I say you will appreciate the—

The Master: Oh, I think I understand it.

Mr. Burr (continuing): The magnitude of the job Dr. Marks attempted to do in connection with the examination of the books and the appraisal of the machinery and property of the

45251 plants.

Mr. Mathewson: And counsel and the Master will also appreciate the force of my suggestion at the time that the work was utterly idle and useless and without value and would be.

Mr. Burr: That is all I want to ask, Mr. Simpson.

RE-DIRECT EXAMINATION BY MR. MATHEWSON.

Q. Mr. Kirby called attention to the fact that the company employed one main where the pressure was as high as a pound and you stated that that continued only for a short distance. As a matter of fact is that not a trunk main from which no services are

45252 drawn?

A. It is.

Q. Running downtown?

A. It is a main leaving Twenty-first Street works and runs downtown to Beaver Street—has only one connection of it between Twenty-first Street and Beaver Street.

Q. And that not a service?

A. No, sir. That is a twenty-inch.

Q. And the pressure falls to about 2 1 2 inches to the end. So that the high pressure continues only for a very short distance?

A. The high pressure continues, what you might call high pressure does not continue for more than half a mile from the works.

Q. When you testified that one block and two wedges were used to every six feet of pipe you said that so far as the main laid under your supervision was concerned that you knew that from the laying as to the balance of the pipe which was laid before you took charge, that was the result of your observation, was it?

A. Yes, sir.

Q. At what time did the East River Gas Company begin to use the heavier mains the same as are used by the Consolidated, and by whose advice and how many years ago? 45254

A. Began about five or six years ago.

Q. And upon whose advice was the heavier main employed after that?

A. Mine.

Q. Now, in reference to the weights of the main, you testified, I think, that about one-half of the present mileage or more than half had been laid new since 1884, either as new construction or in replacement of smaller pipe?

A. Yes, sir. 45255

Q. As to the old mains which have not been replaced, isn't it the fact that hundreds of thousands of feet of the old mains have been taken up?

A. Hundreds of thousands of feet, yes.

Q. Have you had occasion to use those mains which were taken up from time to time in repair work?

A. Some of the sizes, yes, sir.

Q. And in that case were they weighed by the company before being sent out?

A. Yes, sir.

Q. And did you find—

A. That is the mains, the pipe is weighed—

Q. And did you find that that old pipe, so weighed ran below the weight which the company is using now?

A. No, sir.

Q. So that all your tests, and all your observations, teach you that the old pipe was as heavy as the present?

A. Yes, sir.

Q. Now, Mr. Marks, and possibly one other witness, testified as to a hypothetical system of mains involving one main in a street. If that were to be in-
45257 stalled, would it, in your judgment cost more or less than the present system of mains as carried on the books of the company, $7,852,000?

A. It would cost a great deal more.

Q. And what would be the effect as to services, the length of services, and so forth?

A. It would necessitate running a great many long services, fifty per cent of them would be long.

Q. If you have to lay your mains on the side of the street, wouldn't that mean you would have to run some of your services in together, and over, around, or beyond the subsurface structures, from the one
45258 side of the street to the other?

A. It certainly would.

Q. What has been the effect of that in reference to the length of service—to increase or reduce the size?

A. To reduce them.

Q. Would you consider such a system advisable, quite aside from the matter of expense and installation, a single main system throughout the City?

A. I would not, sir. I would say, furthermore, as far as the avenues were concerned it would be im-

possible, and in a great many of the streets it would be impossible.

Q. (Handing papers.) While we are on this subject of pressure, have you received complaints from the Chief Engineer of Light and Power of the City of New York, Mr. C. F. Lacombe, who has testified here, in reference to the pressure which you have maintained within the last few months?

A. Yes, sir.

Q. Are these the letters to which you refer?

A. Yes, sir.

Q. Will you read the first one on the record, the 45260
first date?

A. "Bureau of Lamps and Gas. New York, November 5, 1906. Consolidated Gas Company, 4 Irving Place City. Gentlemen: The following is a copy of letter received from the Gas Consumers' Association which is self-explanatory: 'Mr. C. F. Lacombe, Dear Sir: We find that the trouble with the lights at the pumping station, 179th Street and Amsterdam Avenue, is due to the insufficiency of pressure of gas in the service and the regulators are in no way to blame for the trouble. We met the inspector of the Consolidated Gas Company here by appointment and demonstrated this fact to him conclusively. Yours 45261
very truly, (Signed) W. S. Furman, Mgr.' Kindly give the above matter your early attention, and report on same. Very truly yours, (Signed) C. F. Lacombe, Chief Engineer of Light and Power."

Q. That means the City pumping station?

A. Yes, sir.

Q. What was the second letter?

A. "Department of Water Supply, Gas and Electricity, City of New York, 13-21 Park Row, Dec. 12, 1906. Consolidated Gas Company, 4 Irving Place, City. Gentlemen: On November 5th we wrote you

in reference to poor pressure at the pumping station, 179th Street and Amsterdam Avenue, and requested you to correct same. As we did not hear from you in reference to this complaint, we had one of our inspectors make an inspection on December 5th and he found that the trouble had not been remedied. Will you kindly give this matter your immediate attention, and *notify us when corrected!* I am, Very truly yours, (Signed) C. V. Lacombe, Chief Engineer of Light and Power."

Q. Did you thereupon make investigations as to
45263 the pressure being maintained there?

A. I had investigation made.

Q. And did you have the pressure gauged?

A. I went up and looked over the ground myself, and had a record pressure gauge set.

Q. What was the pressure you found, thirteen-tenths or one and three-tenths?

A. I found the pressure at the nearest street lamp was one and three-tenths inches.

Q. Now, in reference to sheathing, Mr. Simpson: is it not true that sheathing is required to support the other structure in the street and the traffic passing as well as to maintain the material which you
45264 may put in?

A. Yes.

Q. Is it possible to get a trench absolutely level and at the same time solid enough to support your main at the outset without blocking or wedging?

The Master: Did he not testify, pretty fully about that, Mr. Mathewson?

Mr. Mathewson: I don't know that he did exactly as to that.

The Master: I think Mr. Kirby put him through that pretty fully.

Mr. Mathewson: I was going to ask him if that would not require the excavation mathematically for the point required on the bell in each case, if he was to lay it flat on the earth, or else the pipe would rest on the bells at the ends and the rest of the pipe would not touch the earth.

Q. Is not that so?

A. Yes, sir.

Q. When you spoke about not leaving the foreman discretion in reference to blocking or wedging will you explain a little further what you had in 45266
mind as to the cases which do not require, in your judgment, blocking and wedging? Are they many or few, and what have you in mind?

A. Well, I meant that in practically every instance that blocking and wedging was necessary; that it is possible that you might here and there in New York find a block or part of a block where the soil was so good and the conditions were so good that you might possibly get along without blocking, but it would not be advisable to leave it out, in my opinion.

Q. Would those instances be so few as to cut an insignificant figure in the total, or would they be large?

45267

A. It would not make a difference in the total of $250—not $50 even.

Q. In the whole system?

A. No.

Q. If you took the whole system of mains together, would it make a difference of more than $1,000?

A. No; it would not take off $50 from the $50,000 I allowed for blocking and wedging.

Q. In reference to the operation of this tamping bar and rammer, did I understand you to say that the rammer was only to be used on the top of the main, or is it put down beside the main?

A. Not only on top,but beside the main.

Q. How much room is required to operate that in width of ditch?

A. You have got to have room enough for a man to stand and enough room to pass the head of the rammer down between the pipe and side of the trench.

Q. And as to the tamping iron?

A. The tamping iron would require about twice as much room to handle, or more than twice as much as the rammer, because it has to be held at an angle and used at an angle.

45269 Q. How much in width would you say for an ordinary depth of trench, say three feet or four feet?

A. I should not think you would use a tamping bar to advantage in a ditch four feet deep without leaving at least eighteen-inch play room between the side of the pipe and the side of the trench on any pipe of any size.

Q. Take those few instances in which in your judgment it might be possible to lay the main without blocking and wedging, is not there danger there from subsequent construction which are coming in those streets and in leaving the main resting on earth without blocking?

45270 A. No, sir. The blocking would not make any difference in that case at all.

Q. You stated you could not caulk gas mains too carefully for gas; as a matter of fact, compared with water mains, will not gas escape where water will not?

A. It will—

Q. And have you complaints as to gas odors and otherwise which escape from mains from time to time?

A. A great many of them.

Q. Have you noted within recent years complaints

of the City officials as to the leakage of water being very great in New York City?

A. I have read a great deal of it.

Q. On the other hand, how does the leakage of the Consolidated Gas Company or unaccounted for gas compare with other companies that you know of?

A. I think if not the smallest it is one of the smallest of any large city in the world.

Q. Do you remember that the unaccounted for gas by the exhibits was about fourteen per cent in 1884, and it has now been reduced to about two per cent?

A. Yes, sir; about two per cent. 45272

Q. And if by reason of insufficient caulking, gas was allowed to escape and the unaccounted for gas increased, that would raise the cost of gas per thousand feet sold, would it not?

A. It would.

Mr. Burr: That is all speculation. I do not think it proper rebuttal, Mr. Master.

Mr. Mathewson: I am asking questions on the line which you and Mr. Kirby did fully. You referred to water and gas mains, and I have shown the situation. Ours are good, and apparently the water mains are bad, according to the reports of your own officials. 45273

Mr. Kirby: You have not given the reason why.

Mr. Mathewson: I do not have to.

Q. In reference to the pipe used in Boston for water mains, Mr. Kirby read you some weights which were lighter than those used here?

A. Yes.

Q. And you said that there were at least four weights used there?

A. Yes.

Q. How about the heavier weights, how do they

compare with the weights of the Consolidated Gas Company?

A. They are far heavier than those we use.

Q. Is there any general rule which can be promulgated as to the weight of pipe required in the distribution system of a gas company without taking into account the local conditions as to traffic and other structures fully and all the details?

A. No, sir, none whatever.

Q. Do your pipes sometimes break even now with the weight which they have?

45275 A. Very often.

Q. What would be the effect of lighter pipe in that regard?

A. We would have more broken than we have now.

Q. And the replacing of pipe in a situation of that sort would be a matter of large expense, would it not under the present pavements?

A. It would be very large.

Q. In reference to the rock at Sixty-third Street which you said was the only instance you recall where it was disposed of, that was taken out in excavation for a holder, was it not?

45276 A. Yes, sir.

Q. In large blocks?

A. Large blocks. I may add that the man who bought the rock picked out such pieces as suited him as to size and grain and so on.

Q. You also stated that when the subway was built and the trolley conduits were constructed, that the Consolidated Gas Company was paid the expense of moving mains or some expense for rearranging?

A. Yes, sir.

Q. Was not the company put to a good deal of expense in addition to anything that was paid by these subway or trolley companies?

A. It was, yes, sir.

Q. In what lines?

A. We were only paid for any actual work performed. We were not paid one cent for the patrolling and watching of the work to see that they did not injure our system.

Q. And the inspection?

A. And the inspection.

Q. And the rearrangement of mains in your own records, to show the changed conditions, did they pay for that?

A. No, sir, did not pay for that at all. 45278

Q. Your attention was called to the fact that one of the photographs which you have presented showed salt water mains in the middle of the street. Have you photographs that show that here?

A. Yes, sir.

Q. (Handing photograph.) Will you look at these two photographs and say whether they show that condition?

A. On 13th Street, west of Third Avenue, the main is almost exactly in the center of the street; in fact, it is exactly in the centre.

Mr. Mathewson: I offer that photograph in evidence. 45279

Photograph received and marked Complainant's Exhibit 285.

The Witness: And this other one, 17th Street, between Fifth and Sixth Avenues, the cut is also exactly in the middle of the street.

Mr. Mathewson: I offer that in evidence.

Photograph received in evidence and marked Complainant's Exhibit 286.

Q. It has been testified by you that the edges of the pavement broke down where a ditch is temporarily covered and some time elapses between the closing of

the ditch and the final repavement by the asphalt company of the City. As a matter of fact, in your computations, how much did you allow beyond the width of the trench on each side for repaving?

A. Three inches.

Q. Is three inches the width which is actually repaved, or the minimum or maximum?

A. It is the minimum.

Q. Then the average in fact would be greater than that?

A. In nearly all cases it will run between four and
45281 six inches, sometimes as much as a foot on each side.

Q. To your estimate is lower instead of above the average of your experience?

A. Yes, sir. One of these photographs shows five inches on one side and six on the other for the salt water main.

Q. Which is that?

A. That one there (indicating).

Q. That is Complainant's Exhibit 280?

A. Yes, sir. One side is five inch trim and the other side is six inch.

Q. Is it possible, Mr. Simpson, in your judgment
45282 for anyone to make an accurate or even approximately accurate estimate of the cost of installation of mains in the City of New York without a long and thorough study and exact knowledge of conditions still existing?

A. It is not any more than it would be possible for me to go to Boston or Chicago, or any place like that, and make an estimate there. I could not do that, and I would refuse to do it, unless I had gone into the thing very thoroughly.

Q. In spite of your wide experience generally?

A. In spite of my twenty-five years' experience in New York City.

Q. Mr. Burr has asked you with reference to the schedules, City's Exhibits 92 to 103. In comparing them with the maps in reference to the mains you did compare, why didn't you endeavor to examine all of those 350 or 360 pages and compare them?

A. To start with, I knew that it was an absolute impossibility to get any correct data in the way Mr. Marks went at it; in the second place, the errors I found were so many and so glaring, and they were of so many varieties, that there was not time to take 45284
all the errors that were there. I took a few of each kind just as an example.

Q. In order to test the accuracy of the general work?

A. No, in order to prove that I was right and that they could not make those measurements. I knew it was not accurate before I started.

Q. In reference to these twenty-four or twenty-five miles which were omitted in one lump, were they active or disused mains?

A. Active.

Q. You have been asked in reference to services of the gas company where electricity is introduced to 45285
a building, and have stated that they were, as a rule, left. Why are they left?

A. Because they are in practically every case sealed.

Q. Is the gas still connected with the house?

A. If not needed for illuminating purposes, in addition to the electricity, they will need it for fuel purposes, or heating purposes, gas ranges and so on.

Q. Now, you have the maps here which Professor Hale examined, have you not?

A. Yes.

Q. And are prepared to test the accuracy of any schedules which you presented?

A. Yes, sir.

Q. I will ask you to test one of them before the Master. Is that your sheet?

A. What one shall I take? Pick out one?

Q. Well, take this 5th Avenue one—no, take one later than that; take the one on Lenox Avenue, 115th to 110th Streets, which I have checked on this sheet.

A. Get me Volume 8, Lenox Avenue, between 115th and what street?

45287 Q. It is described there?

A. Lenox Avenue from the north property line of 115th Street to the south property line of 110th Street. Now, that reaches from the north property line of 115th Street to the south property line of 110th Street. The south property line of 110th Street is here (indicating). The north property line of 115th Street is there (indicating), that is 24 14 16 inches.

Q. Twenty-four and seven-eighths?

A. Well, Mr. Marks gave it in sixteenths. The official measurement for that—

Mr. Marks: What do you mean by the official measurement?

45288 The Witness: On this card (indicating) the distance of streets and avenues and blocks and so on. From 96th to 125th Street the blocks are 201 feet 10 inches long. There are five blocks, 1,009 feet 2 inches; there are five sixty-foot streets.

Q. Are there not six?

A. No, there is a 100-foot street coming. Five sixty-foot streets, that is, 300 feet; there is one 100-foot street, 110th Street, so that the distance there officially is 1,409 feet 2 inches. 24 14 16 of the scale.

I will take twice ten inches first for convenience sake; ten inches is 550 feet; twice 550 feet is 1,100 feet. Now, I have got 4 14 16 inches, that is 270 feet exactly; is it not, Professor?

Mr. Marks: *267* or *268*.

The Witness: Well, *267*; I said 270, which makes 1,*367* feet against the official scale of 1,400; that is the difference. Now, I want to call your attention, Mr. Mathewson—of course, that refers to the mains on that avenue, too, and on that avenue and that avenue (indicating).

Q. That is on Lenox, 7th and 5th? 45290

A. Yes; it takes every avenue which is on that page, and I have only quoted one or given the exact figures.

Mr. Burr: Why is 5th Avenue given on that map?

The Witness: Does it make any difference if it is a straight line, whether I measure from this side of the page or from that side? Would it not come to the same thing? These lines are perfectly straight across here, and straight across there (indicating).

Q. Of course there might be a slight difference in measuring in this manner due to the personal equation, but not enough to affect the general proposition that the measurements are incorrect, is that right? 45291

A. No, if you want to get it within the finest kind of point, you have to have a very bright light, and one man holding one end and another man the other.

Q. And that you have not here?

A. No; the light is not bright enough; it is very hard to read these sixteenths of an inch.

By Mr. Burr:

Q. While you have the map there, I understood

you to say these maps were made by—what was his name?

A. Who drew the map?

Q. Yes.

A. Do you mean who drew the mains in?

Q. Yes; I asked you to give me the name of the man who drew the maps?

A. I gave you the name of the man who put the mains in.

Q. These are the insurance maps?

A. Yes.

45,264 Q. These purport to be insurance maps of the City of New York surveyed by Perris & Browne, 37 Liberty Street, 1880; that is right, is it not?

A. Yes, sir.

Q. And when you spoke of the gentleman under you having made these maps and having been engaged in making them, you simply referred to his placing on these maps the mains?

A. Yes, sir.

Q. And when you say that the paper shrank, therefore affecting the scale, if the paper is shrunk, it would affect the whole map, would it not?

A. What I meant was if the paper shrunk this

45,265 way—

Mr. Mathewson: Say it shrunk lengthwise.

The Witness: If the paper shrunk lengthwise and the scale is running across the book, it would make a difference.

Q. Do you know in which way the paper has shrunk in any instance?

A. I have not any idea. It shrinks in the printing and in the backing.

By Mr. Mathewson:

Q. In some cases, Mr. Simpson, where these portions are put on these maps by the makers of the

maps, where the character of buildings changes, do not the pasters extend out over the mains?

A. Very often.

Q. So as to cut them off?

A. Yes, sir, very often.

Q. Have you, then, to redraw the mains?

A. Yes, sir.

Q. And on these very maps, are not there instances of that character where a main appears to be cut off by a paster, whereas a main actually exists there?

A. By looking over the volume you could find several instances, and I suppose, of course, as we come across them— 45296

Mr. Burr: I think that should be stricken out. He said you could find by looking over the volume—

The Witness: Well, there are several instances.

Mr. Burr: Then say so.

The Witness: Well, there are several instances which you can find by looking through the volumes. Of course, it is our practice whenever we come across those to put the mains on again.

Mr. Mathewson: If you want to see one, I am told there is one on page 107 of Volume 6.

Q. Now, Mr. Burr has drawn your attention to the fact that, taking Mr. Marks' figures as computed out, and adding to them the Bronx mains and the amount of the five maps omitted and the disused mains, Mr. Marks reaches a total of 804.99 miles, which is substantially the amount given as of a different date by the accountants Marwick, Mitchell & Company or Mr. Hall. Does the 804.99 take into account other errors which you have discovered, even so far as you have examined and which appear in your comparisons of totals to which you have referred? 45297

A. No, sir, it does not.

45298 Colin C. Simpson, Re-direct.

Q. So if there is any such correspondence as that it is a coincidence, isn't it?

A. Merely a coincidence.

Q. Is there any doubt from the figures, from your own information and records, that the amount of active mains of the company on October 31, 1905, actually amounted to the figure you have given, 705 and a fraction?

A. Not the slightest doubt.

Q. And if there appears more disused mains than the twenty-seven miles and a fraction which you gave,
45299 that would indicate merely, would it not, that some mains which were marked disused on the maps have since been abandoned, and have not yet been marked off?

A. Yes, sir.

Mr. Mathewson: That is all.

By Mr. Burr:

Q. I will ask a question which I should have asked before. I understood you to say, when Mr. Mathewson asked you as to what experience you had, if you would rehearse that story again, that you took occasion to say that the mains from Astoria were now in successful operation—did I understand you correctly?

45300 A. Yes.

Q. Will you tell me how they are being successfully operated today?

A. By conveying gas from Astoria to Ravenswood and through the tunnel to New York.

Q. Well, they are conveying gas from the first unit at Astoria?

A. Yes, sir.

Q. To where?

A. To Ravenswood in Long Island City.

Q. Through whose mains?

A. Through the sixty-inch main that I was talking about.

Q. Well, to whom does that belong, whose main is it?

A. Well, I suppose it belongs to the East River Gas Company of Long Island City.

Q. And where does that connect, at Ravenswood?

A. Yes, sir.

Q. With what mains does it connect there?

A. It connects there with the works and the tunnel.

Q. And is that the East River Gas Company's 45302
main, too, in the tunnel?

A. Yes, sir.

Q. So that the Astoria plant is making gas and transferring it to the Borough of Manhattan through the sixty-inch main owned by the East River Gas Company at Ravenswood and extended through the tunnel under the East River?

A. I don't know that it is owned by the East River Gas Company; it was laid by the East River Gas Company; that is one of the things I don't know.

Q. Where does it connect with the Consolidated in Manhattan?

Mr. Mathewson: That all appears in evidence, 45303
where the tunnel from Ravenswood connects with the Consolidated Gas Company.

Mr. Burr: This is something which has recently happened.

The Master: Do not discuss it at length, he may answer.

Q. Where does it connect?

A. At a great many points.

Q. The main in the tunnel?

A. The main going through the tunnel connects

with several mains of the Consolidated Gas Company in Manhattan.

Q. What are they?

Mr. Mathewson: Is it worth while going all over this? It was all asked on the direct. It is merely additional gas going through the tunnel which has recently been manufactured.

The Witness: It connects with a thirty-inch main which connects with every gas plant or station of the Consolidated in Manhattan. It also connects—

45305 Q. At what point does it connect with that main?

A. Seventy-first Street and Avenue A.

Q. With what other?

A. A twenty-four inch main going to the New Amsterdam Company.

Q. Where?

A. Fortieth Street and 1st Avenue. It also connects with a thirty-six inch main going across town belonging to the East River Gas Company.

Q. You are now receiving gas today in that way, are you, through those mains?

A. Yes, sir. I don't know that we are receiving any gas from Astoria through those mains; I don't know what is being done with it.

45306 Q. Where do you think it comes from?

A. It might come from the Ravenswood plant; they have a big works there at Ravenswood, making twenty-five million a day.

Q. Then you don't know that the gas is coming from the Astoria plant?

A. I know that gas is going from the Astoria plant through that main.

Q. And you suspect it comes over by way of Ravenswood?

A. Yes, sir.

45307

Q. Now, you say that the company seeks or is ambitious to reduce the size of its services?

A. No; it seeks to reduce the length of the services, but not the size.

Q. I do not mean the number, but the extent, so far as length is concerned?

A. The length of it, it does.

Q. In other words, Mr. Mathewson called attention to the fact, as he claimed, that if there was a single main in the street you would have to have longer services?

A. Yes, sir.

45308

Q. And the idea of the company was that you should have shorter services; therefore you got as close to the curb as you possibly could?

A. Yes, sir.

Q. Have you not claimed that the reason that the company does that is because after the services are put in the services no longer belong to the company but belong to the owner of the real estate?

A. I never said so in my life.

Q. Did you not so testify in a tax proceeding?

A. No, sir; never.

Q. In an attempt to evade taxation, that the company should not be taxed for these services because after having been put in the building they belong to the owner and not to the company?

45309

A. No, sir; never testified to anything of the kind.

Q. Did you ever hear of anyone testifying to that effect for the company?

A. No, sir.

Q. You have said very frankly that you saw Dr. Marks undertake to make the measurements on these mains and you knew from the very beginning that he could not get any correct data, because of the manner in which he started to get the information that he thought the maps contained?

A. I knew he could not from the time he had.

Q. Oh, not from the method he pursued?

A. Yes, from the method he pursued, too; from the time and method.

Q. Did you call his attention to the incorrectness of the method he was pursuing?

A. I told Professor Marks that the maps were not drawn to scale in my office, and it was after a conversation of that kind I called his attention to several of that kind, and he said that he thought he could come within five per cent of being correct.

45311 Q. Didn't he tell you he was going to correct the scale?

A. He might have, but it would not make any difference.

Q. But you would not swear he did not tell you he was going to correct the scale as he went along?

A. I would not swear that he did not, and would not swear that he did.

Mr. Mathewson: He himself testified that he did not compare this scale with anything else, or correct it officially, or compare it with official scales—there is not much use of following this out. Look up his testimony. I asked him par-

45312 ticularly about that, and he said no, he did not test this by official maps, the length or the scales.

Q. Is it not a fact that you used pabbles—or, I mean, cobblestones—instead of blocks to support your pipes?

A. I would like to catch anyone of my men rying it; he would lose his job.

Q. What is the real object of putting the blocks in, so that they can support the pipe, or is it to give a space there in which the caulking may be done?

A. No, it is to support the pipe and give the pipe a good firm bed to rest on.

Mr. Burr: That is all.

By Mr. Kirby:

Q. Does the Consolidated Gas Company have any other main in which it carries a pressure approximately that of the main which we have been speaking about today?

A. No, sir; nor anywhere near approximating it.

Q. What is the highest pressure you have in mind beside this one?

A. I should say the highest pressure we have on any other main—do you mean transfer or service main? 45314

Q. Transfer main.

A. In a transfer main you might at some place near the station get to possibly nine or ten inches with an exhauster pushing it.

Q. You did not understand from Mr. Edgerton's testimony, did you, that he contemplated taking his services direct from this high pressure main?

A. No, I did not.

Q. In putting down these mains, that is, in digging your trench, how do you make room for your bell?

A. I allow room for the bell when I make my trench; I have room for the bell. If the trench is narrow at the bell I will widen it out. 45315

Q. And what do you do at the bottom of the trench?

A. Open up for it.

Q. So that in no way does the pipe rest upon the bell itself?

A. No.

Q. And such blocks as you use are not laid in to support the pipe to a height that will take the weight off from the bell?

A. No.

Q. Your blocks are countersunk, are they not?

A. Yes, sir.

Q. And the bottom of the trench scooped out for that purpose?

A. Yes, sir.

Q. And your blocks rest upon the very ground which the pipe rests upon, do they not?

A. Yes, sir.

Q. And you seek in every case to get as much of the pipe as possible upon the ground, do you not?

A. We do.

Q. You have said that you considered it inadvisable to use lighter pipe. Have you ever used any
45317 lighter pipe?

A. No, sir.

Q. You said the same would break before the other would break?

A. Yes.

Q. Upon what do you base that conclusion if you have not used it?

A. Upon my knowledge of the conditions.

Q. I presume that you mean in regard to leaving services in the ground when the use of gas is either discontinued in whole or in part, that no change whatever is made, that the service remains there as it was formerly?

45318 A. No, sir; all our services are renewed, all services that have gas in them are renewed when they show any signs of deterioration.

Q. But they are not if they are not changed?

A. No; except if it is necessary to change them on account of size or anything of that kind.

Q. You do not take out a large one and put a small one in its place?

A. No, sir; we never do that.

Mr. Kirby: That is all.

By Mr. Mathewson:

Q. Assuming, Mr. Simpson, that gas is being made

and sent out from Astoria, do you know of any way that the Consolidated Gas Company could get it to its mains in the City of New York, except by some temporary arrangement, of sending it round through the Ravenswood tunnel?

A. I know there is no other way.

Q. Pending the completion of the other tunnel direct from Astoria?

A. Yes, sir.

Mr. Kirby: There is one other question I omitted.

By Mr. Kirby: 45320

Q. You have mentioned having taken pressure at a certain point in the city, where was that point?

A. I do not think I mentioned having taken pressure. I mentioned that I was familiar with pressures all over the city and have seen them taken.

Mr. Mathewson: At the nearest lamp in reference to Mr. Macombe's complaint.

The Witness: I said I had the pressure taken there.

Q. You did not take the pressure there?

A. No; I had a gauge set there.

Q. Did you set the gauge?

A. No, I had it set by my orders, and the chart brought to me after twenty-four hours. 45321

Q. Where did you have that placed?

A. The nearest lamp post to the pumping station.

Q. Where was that?

A. About forty feet west of the station.

Q. Where is the station?

A. One hundred and Seventy-ninth Street and Amsterdam Avenue.

Q. What sort of a gauge did you order set there?

A. Bristol Recording Gauge.

Q. And how was it set?

A. I ordered them to set it on top of the lamp post. I ordered them to test the gauge with a water gauge, and if it was correct to bring me the chart.

Q. You did not do any of the work yourself?

A. No, sir.

Q. Did not attach it?

A. No, sir.

Q. Or see it attached?

A. No. I went up and looked over the ground and saw the situation at the pumping station.

45323

COLIN C. SIMPSON, recalled for further examination, testified as follows:

By Mr. MATHEWSON:

Q. What kind of pipe does the Consolidated Gas Company use in its services, standard pipe or otherwise? A. Standard pipe only.

Q. Do you know of any instance where it has used anything but standard pipe?

A. On service pipes; no, sir.

Q. Is there anything to indicate that that pipe before you to which Mr. Maxwell has just testified is

45324 not standard pipe?

A. No, sir; nothing at all.

By Mr. Kirby:

Q. What do you mean by standard pipe?

A. What is sold in the market as standard weight pipe.

Q. What weight is that?

A. I could not tell you offhand from my head.

Q. Do you know what weight that pipe is, Exhibit 306?

A. I do not. I know if it is a Consolidated Gas Company's service, it is nothing but standard pipe.

Q. Do you know when that pipe was put in?

A. I do not.

Q. Do you know when it was taken out?

A. I do not.

Q. You did not know that these experiments were being made?

A. Which experiments?

Q. The electrolytic experiments?

A. Which ones are you talking about?

Q. All we have been hearing about the last two or three days?

A. I have not heard all of them. 45326

Q. Did you know that any experiments were being made for the purpose—

A. I did—for the purpose of what? You did not finish your question.

Q. For the purpose of being put in evidence in this case?

Mr. Mathewson: They were not made for the purpose of being put in evidence in this case.

The Witness: No, not for the purpose of being put in evidence in this case.

Mr. Mathewson: No notion of them until you put in your case and we had to rebut it.

Q. Then these pipes were removed without any knowledge on your part? 45327

A. It depends where the pipes were removed from. If you will tell me where they came from, I will tell you whether I had any knowledge of it.

Q. This pipe was removed from 456 West Broadway.

A. If 456 West Broadway is at Spring Street and West Broadway, they were removed with my knowledge.

By Mr. Burr:

Q. Mr. Simpson, you recall that when you were

45328 Colin C. Simpson, Re-direct.

here a day or so ago on the stand, I called your attention to the question of services, you stating that the company could not put a main in the middle of the street because it would lengthen the service, and I asked you then whether you remembered stating that the services were, after being placed in the buildings, of no further utility to the company, that is, they became property that if the gas were discontinued you abandoned the property, the services themselves?

Mr. Mathewson: No, he did not testify to any such thing—

45329 Q. One moment. I asked you if in a tax proceeding you did not testify so, and you said no, it must be somebody else—

Mr. Mathewson: I object to this.

Q. The case I had reference to is in the Supreme Court, entitled the People *ex rel* the Consolidated Gas Company against James L. Wells, and others in Special Term, Part IV, November 17, 1905, where you appeared as a witness, do you recall that?

A. Yes, sir.

Q. And did you testify in that proceeding: "That it would cost ten times as much to take out services as we could get for the material. Q. In other words, it would not be worth taking up and carrying home? 45330 A. Not by any means. Q. Is that the reason why you stated you did not take out the three thousand services you referred to as being discontinued in a certain period as was mentioned by counsel for the respondent? A. Yes, sir. We never take out—we have probably sixty thousand of them today which are discontinued and they are not worth taking out." Was that your testimony on that occasion?

A. I would like to qualify my answer—

Q. Was that your testimony on that occasion?

A. I testified that where services were cut off from

the mains and were no longer fit for use we never took them up; I never testified that a good service was abandoned.

Q. I am not referring to that, but to services that were discontinued.

A. We repeatedly, with two or three services in the building, we replaced one of them, and the other two or three which are no more fit to use would have to be replaced at large expense, and we cut them off at the main and abandon them.

Q. Did you so testify, and if you did, is it correct?

A. I would have to look over my testimony and be 45332
very careful about it before I answered that question.

Q. Look at your testimony (handing book).

A. I may say in the first place that we could not or did not lay mains in the middle of the street because it took longer services. I testified that we did not because the city would not give us a permit, and on your question whether it would pay us, I said it would not, because we would have a longer service from each side of the street.

Q. Then I called your attention to this testimony and you testified you never made such statements as I quoted, but that it must have been somebody else.

Mr. Mathewson: He did not. He made no 45333
such statement.

The Master: It is hardly cross-examination of any direct-examination brought out here today, but now that Mr. Burr has caught him—when I say caught, I mean caught him here in the room—he may proceed.

Mr. Mathewson: How is it possibly pertinent? What difference does it make whether we abandon services which are useless or not? Of course, we do, and they are marked off the property, too.

Mr. Burr: That is what you say when you want to avoid taxes, but when you want to capitalize they all appear.

Mr. Mathewson: How does it help your case?

Mr. Kirby: That is a matter of argument.

Mr. Mathewson: It is a waste of time.

Q. Well, I will not consume any more time now. Any time I would be glad to let you see the original papers.

A. Very well, but I want to look at this testimony. I have been on the stand a good many times in the
45335 last three or four years and I would not say what I testified to at any particular time. I know we have thousands and thousands of services cut off from the mains that are no longer of use, and the value of the material taken up might be fifteen cents and the cost of taking them up would be more than $15 and we would not be stupid enough to take that material up, no question about that. But a good service that is still connected with the main and still going into the house and ready to supply gas at any time is always left and is kept on our books as a service. If it is cut off at the main and abandoned it is taken off our books.

45336 Q. Did you not claim in that proceeding that the services became the property of the owner?

Mr. Mathewson: That is the inside service in the building. It is a legal question whether it is or not.

The Witness: If it is abandoned and he wants to take it he is welcome to it. We do not want it if it is an abandoned service.

By Mr. Mathewson:

Q. Where a service is abandoned, as you have indicated, it is taken off the books as an asset, is it not?

A. Yes, sir.

By Mr. Kirby:

Q. You mean that you report to the other department of the company that it has been abandoned?

A. Not only that, but I take it off my schedule of services at the same time, and it is reported downstairs, too.

January 30, 1907, 3:00 P. M.

FREDERICK J. MAYER recalled by complainant in rebuttal. 45338

DIRECT-EXAMINATION BY MR. MATHEWSON:

Q. Mr. Mayer, you have read the testimony of Messrs. Edgerton and Marks respecting their valuation of plants, apparatus, general connections and holders?

A. I have.

NEW YORK MUTUAL GAS LT. CO.

COST OF GAS FOR THE NOMINAL YEAR ENDING OCT. 31, 1905. 45339

		Cost per M made
Coal used in Generators, 31,812.75 Tons at $4.40	$139,976.08	06.17
Coal Used Under Boilers, 13,220.18 Tons, at $2.3588	31,183.57	01.38
Coal Handling	1,684.48	00.07
Oil Handling (Drip)	5,181.95	00.23

Gas Oil, 10,725,228 Gals., at 8.04495	482,120.96	21.26
Oxide, 33,006 Bus., at 8.1814	5,986.19	00.26
Water, 6,135,350 cu. ft., at 81.00 per M	6,135.35	00.27
Sundries, Wood, Waste, etc.	791.50	00.03
Purifier Labor	5,056.84	00.22
Other Labor	51,843.79	02.29
Repairs	31,478.77	01.39
Expense at Works	10,595.75	00.46
Distribution at Works	7,241.90	00.32
45341 Total	8779,277.13	34.35
Less Wharfage	323.29	00.01
(Gas Made, 2,268,275,000 c. f.)	8778,953.84	34.34

Q. And have you, so far as you are able, in the time at your disposal gone over the schedules that they have filed?

A. I have.

Q. You have observed the estimates that they have
45342 made on your valuations, and the figures that they have given?

A. Yes, sir.

Q. Now, taking first Mr. Marks' values, do you find that Mr. Marks has omitted any apparatus which you valued?

A. Yes, sir.

Q. Have you prepared a schedule stating in some detail what he did omit which you have discovered?

A. Yes, I have.

Mr. Burr: Do I understand this is different from the original valuation of the apparatus

45343

omitted from the schedule as presented by Mr. Mayer?

Mr. Mathewson: Yes, Mr. Mayer. That Mr. Marks has omitted the apparatus which Mr. Mayer valued.

Mr. Kirby: Which valuation is in the testimony.

Mr. Mathewson: Yes. Certainly. I am referring now to Mr. Mayer's—

Mr. Burr: Previous testimony.

Mr. Mathewson: Certainly.

45344

Q. Does this schedule which I show you contain a statement of the omitted items so far as you have discovered?

A. Yes, sir.

Q. I see it consists of several columns, one of which is headed Mayer's Cubic Contents. Under that column appears the cubic contents and you estimated them and your cents per cubic foot under that estimate, does it not?

A. Yes, in some instances.

Q. And in the second column is: "Mr. Marks' Cubic Contents"?

A. Yes.

45345

Q. And the contents per foot which he estimated?

A. Yes, sir.

Q. The next column is his valuation, and the last column is your valuation?

A. Just the reverse, the third column is mine and the fourth column is Mr. Marks'.

Q. And in the last column the difference appears both in statement and cubic feet, and in the cost does it not?

A. Yes.

Q. But where you have a minus sign in the last column before any amount, what does that indicate?

45340 Frederick J. Mayer, Direct.

A. It means that it is less than my valuation. Where there is a plus sign it means it is more.

Q. And where items are omitted entirely they are marked "omitted" if I understand this correctly, and the valuation which is inserted in that then is your valuation of that particular item?

A. That is right.

Mr. Mathewson: I offer this schedule in evidence as Complainant's Exhibit 370.

Mr. Burr: I object to this Mr. Master, because apparently what it contains is already in evi-

45347 dence. This does not purpose to give anything more, for instance, than the differences between Marks' cubic contents and Mayer's cubic contents. That has already appeared in the record. Mayer's cubic contents. That has already appeared in the record. Mayer's valuation appears on the record, and Marks' valuation appears on the record. So far as matters have been omitted by Mr. Marks, I have no objection to that being called to the attention of the Master, but this spreading of a lot of comparative figures on the record I object to.

The Master: If that tends, as I think it does,

45348 to save the time of the witness in pointing out what he claims to be the errors in computation of other witnesses, I will let it in.

Mr. Mathewson: But more than that, Mr. Master, this contains the omitted items and the cubic contents Mr. Marks employed, which were mostly included in a general schedule, not put in evidence, but which as I recollect he called attention to and submitted to us for our examination and criticism.

The Master: I will admit it.

Received in evidence and marked Complainant's Exhibit 370, January 30, 1907.

Mr. Burr: I except.

Q. Now, have you also made up a schedule, Mr. Mayer, for convenience in giving your testimony, for counsel, showing the valuations as given by Mr. Marks originally, and adding back the items of depreciation which he deducted, so as to get the original cost without depreciation, as per his figuring?

A. I have.

Q. And also adding in the omissions in the cost of each plant, where you have noted omission of ap- 45350
paratuses?

A. I have.

Q. And then for the purposes of comparison with your own testimony have you upon that basis of original cost computed the ten per cent engineering charge, which you considered to be proper, and five per cent interest?

A. Yes, I have added that to it.

Q. And is this schedule which I now present separated as to stations, the result of adding these omissions and making the other corrections to which I have just called your attention?

A. Yes, sir. 45351

Q. Now, then the original cost taking all the plants together with the ten per cent for engineering charge and five per cent interest charge added to Mr. Marks' valuation, together with the omitted items, amounts to how much?

A. The total of plants and holders and stations $14,345,635.00.

Q. As against your total without depreciation of how much?

A. $16,137,477.00.

Q. Or about $1,800,000 less?

45352 Frederick J. Mayer, Direct.

A. Yes.

Q. And you have not in this $14,345,635.00 included the cost of installing apparatus, setting it up while Mr. Marks may have given the cost of apparatus merely delivered at the station?

A. No, I have given his cost as given in the testimony.

Q. You have read his testimony where he stated that he considered your value of apparatus substantially correct?

A. Yes.

45353 Q. And did your valuations for the individual items of apparatus to which he was testifying include any ten per cent and five per cent as they have appeared on your schedule of individual items, or do you add that ten per cent and five per cent at the end?

A. At the end, each station.

Q. So that the individual valuations of the different pieces of apparatus in your case do not include the ten per cent and the five per cent?

A. They do not.

Mr. Mathewson: I offer this paper in evidence.

Received in evidence and marked Complainant's Exhibit 371, January 30, 1907.

45354 Q. Referring now to Mr. Edgerton's estimate of value of plant less depreciation, $9,367,344.25, do you find that he computed his three per cent for engineering and superintendence on the original cost of the plant new or on the value of the plant after you have taken out depreciation?

A. After depreciation was taken out.

Q. Is that in your judgment a proper way to compute the engineering expenses?

A. It is not.

Q. Why not?

A. Because no depreciation exists when you can

make your estimate originally. You estimate on a new plant, to which ten per cent for general engineering is to be charged.

Q. Well, what have you to say as to the sufficiency of three per cent, according to your experience and knowledge, to cover the general expenses for engineering and superintendence and the other items which are not included in the amount paid to the contractor?

A. The actual expense is nearer fifteen per cent than ten per cent, in some instances the grading consists of the removal of twenty to twenty-five feet of earth on top of the original ground before you get the 45356
surface for the foundation.

Q. Now, Mr. Edgerton has also employed four per cent as the amount allowable for interest. Do you find that he has also computed the four per cent on the depreciated value of the plant instead of on the original value?

A. Yes, sir.

Q. Is that a correct method of procedure?

A. It is not for the same reason that the engineering charges are not chargeable on that basis.

Q. Mr. Edgerton stated he allowed four per cent because he thought that a somewhat shorter period than two years might be required to construct these 45357
plants, if they were to be constructed. What is your judgment as to the period required being less than two years?

A. I know it cannot be done in less than two years.

Q. You observed that Mr. Edgerton in comparing his values of depreciated plants placed only value on apparatus after depreciation was taken, or value on depreciated apparatus in many instances, did you not?

A. Yes, in many instances.

Q. But coming to the valuation of the plant, now upon Mr. Edgerton's basis, have you made a com-

putation adding in the original cost of apparatus as given by him, or the valuation of these items new, where he has accepted your valuation?

A. I have.

Q. And will you state what that would make his valuation upon his own basis.

A. The second column there I think, that is excluding the omission—

Q. Excluding the omission—

A. $10,266,704.

Q. And do you find that he has omitted various
45359 items of apparatus?

A. I do.

Q. What do those which you have observed that he has omitted, amount to in the total?

A. $124,544.

Q. And that $124,544 is your valuation of the omitted items, is it?

A. Yes.

Q. That would make a total original cost new, including these omitted items, of how much?

A. $10,388,248.

Q. And if you include his engineering charge at three per cent and interest at four per cent, what would the total be?
45360

A. $11,115,425.36.

Q. Now, if you were to add the engineering charge of ten per cent, which you say is the minimum figure, and the interest charge of five per cent on the basis of two years' period required, what would the total cost be, new?

A. $11,998,425.

Q. Now, the sheet which you have here shows the detail by stations on such testimony, does it?

A. It does.

Mr. Mathewson: I offer that in evidence.

Received in evidence and marked Complainant's Exhibit 372, January 30, 1907.

Q. Now, in reference to your method of computing the valuation of buildings in the time at your disposal, Dr. Marks claimed at the outset of his testimony that such a basis of valuation would not give correct results. What is the fact in reference to that?

A. Well, I know from my own practical experience that the method which I pursued in establishing the cost of the buildings, basing the same upon a certain amount per cubic foot is absolutely correct, particularly when a number of buildings such as form a 45362
gas plant are to be considered. It is possible that in one or the other of the buildings a slight difference may occur in the unit of value, but in the total aggregate for all buildings, I am absolutely sure that the valuation is correct.

Q. Have you made comparisons between such estimates and the actual cost of buildings in order to determine whether it does figure up substantially correctly?

A. I have. I made an estimate of the 132nd Street governor and boiler house. In fact, that estimate was made last summer and the unit of valuation per cubic feet was based upon such detailed estimates. I have 45363
made estimates of the sheds 1 to 6 at the 21st Street station. I have made estimates of the foundations of the old and new generator house at the 21st Street station. I also obtained the actual cost of the various buildings, retort houses, that have just been completed under my own supervision and in accordance with my designs, and the actual cost of such buildings also indicates that my applied units of valuation are absolutely correct.

Q. Well, if there is any difference, do you find that your unit of valuations, the unit of value used by you,

are greater or less than the unit of value and actual cost of these buildings.

A. If anything they are a little less than those of the actual cost of buildings I just referred to, and some of these buildings, one at least, was not constructed in New York at all. They were constructed under conditions which are not applicable to New York cost.

Q. Less expensive or more expensive?

A. Less expensive, that is, less for labor in particular, and still the unit cost per cubic foot shows almost
45365 as high as the one I have applied.

Q. Now, in estimating the 132nd Street governor and boiler house for the purpose of testing your unit figure, was that estimating from drawings and detailed specifications?

A. That was from drawings, specifications, and also from the building itself.

Q. And have you such drawings and specifications here?

A. I haven't the drawings and specifications, but I have the detail estimates.

Q. Now, Dr. Marks subsequently used your cubic contents of value in computing his valuation of build-
45366 ings?

A. Yes, sir.

Q. And he stated he took the unit of the governor and boiler house at 132nd Street, 14 4 10 cents per cubic foot, as against the 13 2 10 which was your value?

A. Yes, sir.

Q. Did you use that unit of value or did you use the cubic foot value which you employed at 132nd Street in the same method in reference to all the other buildings, making allowances for changes as due to the character of the buildings?

A. Well, yes, each house the value is proportioned to the character and detail in design of that particular building, adapted to such conditions.

Q. And as Dr. Marks took a higher figure for the 132nd Street, which he adopted as a unit, if he had followed the same value throughout, wouldn't his valuation of buildings have exceeded yours, instead of being less?

A. It would undoubtedly.

Q. Now, he proceeds taking the 132nd Street building to apply this as the unit of the other buildings, and he referred particularly to the 112th Street building, where he allowed fifteen cents per foot as against 14 4 10 for the 132nd Street building with practically the same unit— 45368

A. Yes.

Q. Is the same unit applicable to these two buildings?

A. It is not.

Q. Why not?

A. Well, the superstructure apparently while of identical construction or similar in construction, the foundations vary entirely.

Q. Which was the more expensive construction?

A. The 111th Street building, for various reasons. First, because it contains a very much larger amount of machinery, and then the foundations were carried down to a depth of about sixteen feet, which was necessary on account of the two large holders which were constructed in the immediate neighborhood, demanding excavation there for the reason that all the earth on the original site of this building had to be removed. 45369

Q. Now, Dr. Marks referred to the finish of the 132nd Street buildings as finished substantially more expensively than the 111th Street?

45370 Frederick J. Mayer, Direct.

A. There is very little difference in the finish of any of these buildings; the finish forms but a very small portion of the total cost; although in these two instances they have some enameled brick finish in the interior of the rooms.

Q. In examining the unit figure Mr. Marks employed in reference to the other buildings as compared with the 132nd Street, are you able to find any consistent relation in the character of buildings and the unit figure used?

A. I am not.

45371 Q. Do you find anything in his figures which changes your own estimate as originally made, as to the value of buildings?

A. I do not.

Q. I think Dr. Marks gave no details for the different buildings.

A. No.

Q. Except as to cubic feet?

A. No.

Q. Now, taking Mr. Edgerton's detailed prices he computes the 132nd Street building at $21,160, but his schedule it appears would call for a value of $30,000.

A. It does.

45372 Q. Now, have you a detailed estimate of the 132nd Street building comparing your values with Mr. Edgerton's, pointing out wherein he has omitted items or is in error?

A. I have.

Q. Is this it (handing witness paper)?

A. Yes, sir.

Q. And does the comparison of the figures or the items as given under the head "Mayer's Valuation" as compared with the column "Edgerton's Valuation" indicate the extent of the figure in which you think he is in error in each case?

A. It does.

Mr. Mathewson: I offer this paper in evidence.

Received in evidence and marked Complainant's Exhibit 373, January 30, 1907.

Q. Now, you have prepared a detailed estimate, have you not, to check your figures on the No. 2 shed at 21st Street?

A. Yes, sir.

Q. And that would give a total of the detailed estimate of how much for the shed?

A. $67,846.

45374

Q. Well, that is the amount of your original schedule, is it?

A. That is the amount for the original shed, the total estimate, first value $65,888.13—

Q. That is a trifle less than your original estimate?

A. Yes.

Q. But did this average that you employed at 16 cents per cubic foot, for the sheds at 21st Street, would that apply also to the shed No. 6, as well as the purifier house and condenser there?

A. It applies to all sheds from 1 to 6, and some of them are at present used as purifiers and condenser houses. 45375

Q. How do the purifier house and condenser house, as well as shed No. 6 compare in expense of construction with shed No. 2?

A. Well, the average for all of them is 16 cents a cubic foot, for the reason that the purifier house and condenser house have double floors and more foundations with apparatus which is omitted in the case of the shed.

Q. So that the average of 16 cents you would consider fair?

A. It is fair for all of them.

Q. Now, figuring out the valuation of the coal shed at this station by a detailed estimate according to your figures you find results how?

A. I find a value of $69,830.

Q. And what have you got there in your schedule, as the value, according to cubic contents?

A. $63,168.

Q. And to what is the increase in value by the detailed estimate due in general?

A. At the time the original valuation was made the
45377 inclined bottom supported upon timbers for the carrying of coal was not calculated in detail. Such has been done now and that increases the original value given.

Q. Now, have you testified as to the foundations which you have employed in your apparatus and buildings. How do you find what character of foundation was used, or determine what character of foundation to figure upon in these estimates?

A. Whenever the character of the ground appeared doubtful or the character of the foundation, in each instance, I referred to drawings where I could find such, and where I could not find drawings I got the
45378 information from the people who had been at the works for a long time.

Q. And isn't it a fact that some of these buildings are on soil that is way below the depth of the street, that is on low ground?

A. All of the buildings are on such soil.

Q. Now, from your experience in addition to the information that you got from books and other sources what would you say as to the character of the foundations which must be required under buildings on such soil?

45379

A. They could not be constructed without pile foundations.

Q. Now, do you find on Mr. Edgerton's valuations for these buildings to which I have called your attention, that he has made any allowance for pile foundation or any foundation except the ordinary foundations that could be used in the hard soil?

A. He had not, and in some instances he did not allow enough for ordinary foundations.

Q. Now, Mr. Edgerton suggested that there were no foundations under the water gas apparatus which he was able to ascertain, have you a sketch here showing the foundations under these apparatus as they really exist?

45380

A. I have, and this sketch was prepared from drawings which I saw at the works, which I was told were used for the construction of these foundations.

Q. Did those drawings appear to be correct so far as you could check them by your own observation?

A. They did.

Q. And how did you find this foundation was constructed, of what material was this foundation in the old generator house?

A. In some of the drawings I saw at the works show a depth of foundation of from 8 to 10 feet below the surface line, supported on piles and stone flagging.

45381

Q. What did you find that the foundation under the water gas apparatus consisted of?

A. The foundation under the water gas apparatus consisted of solid concrete five feet in depth, under the superheater and carburetter and 5 feet 6 inches of depth under the generator.

Q. Did you find that Mr. Edgerton in his estimate made any allowance for these expensive foundations?

A. No, sir.

Q. What did you find the detail estimates for the

foundation under the buildings as well as the apparatus give combined with the old and new generator houses?

A. The total of all foundations for buildings and apparatuses is $88,595.

Q. Now, at what figure did you carry these foundations in the new and old generator houses in the schedule of valuations which you presented, and which are criticised by defendants' witnesses?

A. The valuations of the foundations for the two buildings amounted to $32,197 in the instance of the
45383 new generator and $31,065 in the instance of the old generator house.

Q. Making a total valuation of for the two houses?

A. Of $63,262.

Q. Well, now, it appears that the difference between that and the detailed estimate you have specified is $25,333. How is that difference taken care of?

A. In the application of the unit values per cubic foot of building done. I have allowed for ordinary foundations constructed in soil that required no reinforcement. In other words, in all my unit valuations on buildings, by the cubic foot foundation, of about four feet in ordinary soil below the surface
45384 line are included. Therefore, this only represents the difference—

Q. Now, have you endeavored to establish the value of foundations given by Mr. Edgerton from his testimony in relation to these buildings?

A. I tried to, but it was impossible as the foundations were not given in detail separately from the rest of the building.

Q. Have you examined the values which he gave for the excavation of these buildings?

A. The excavation of these buildings? The excavation is chargeable to the foundations only. I

have examined some items in Mr. Edgerton's testimony.

Q. What do you find in that regard?

A. In the instance of the old and new generator house I find that he has a total item for excavation amounting to 629 cubic yards.

Q. Figured at how much per yard?

A. At a dollar per yard, a total value of $621.00.

Q. Now, what is the cost of excavation, I mean the depth of excavation of the character required for such foundations in the City of New York, including the carting and dumping? 45380

A. The actual amount of excavation in the two above referred to buildings, is 6,740 cubic yards, or over ten times as much as that allowed by Mr. Edgerton in his testimony.

Q. And at what price do you figure deep excavation including carting and dumping in the City of New York?

A. Excavation in ground of this character, where there is a large quantity of water to be encountered, is exceedingly slow, and is worth two dollars a cubic yard.

Q. Therefore, the total cost of excavation for these two buildings, would equal how much as compared with Mr. Edgerton's estimate of $621? 45387

A. $13,480.

Q. In that estimate has any allowance been made for sheet piling and pumping?

A. None whatever, but it should have been made. such item is absolutely indispensable in excavating in ground of that character.

Q. Is sheet piling and dumping included in that amount of $13,480?

A. No, sir, that is an extra item. That $13,480 is for the excavation alone.

Q. Now, what would be the total value of the sheet piling and pumping in addition to the $13,480?

A. The sheet piling for these two buildings cost $3,360, whereas the item of pumping cost $5,750. That last item of course includes boiler, fuel, the water, the salaries of the engineers and coal, etc.

Q. Well, then, the expenditure, if I aggregate these correctly for these foundations should be $22,620 as against Mr. Edgerton's allowance of $8,620?

A. Yes.

Q. So there is a difference of $22,000 about?

45389 A. Yes.

Q. Now, have any allowances been made by Mr. Edgerton for the solid concrete and brick foundations which are under the water gas apparatus as shown in the sketch of the foundations which you have prepared?

A. There has not been.

Q. From what were these sketches drawn; what kind of drawings are these sketches which you have prepared?

A. From the drawings in existence at the works, which I understand were used in building these foundations; that is the old generator house showed piles

45390 and solid brick foundations, which formed the foundation of the original benches, the retort benches. The concrete foundation I think under the water gas apparatus was not piled.

Q. Now, generally speaking, without going into great detail, have you compared Mr. Edgerton's estimates upon various factors of cost with the actual cost of construction as known to you in New York for these particular factors?

Mr. Burr: I think that was all gone into.

Mr. Mathewson: It is simply a general question which is introductory to something else. I

could not have been gone into, any comparison, because he has not been on the stand since Mr. Edgerton was on the stand.

Mr. Burr: He gave his general reasons.

Mr. Mathewson: That is something different.

The Witness: I have.

Q. Now, suppose you take one building and make some comparisons, what building would you select?

A. For instance, the building which we have only completed a short while ago at the new plant of the Astoria works, the inclined retort house.

Q. How did you find that the unit of cost which 45392
you have employed in computing the value of buildings, compares with the actual unit of cost of that building?

A. The cost of that building?

Q. Is your unit of cost more or less than the actual unit of cost in that case?

A. It requires a little explanation.

Q. Well.

A. In this instance the building is higher, and, therefore, the relative cost of the foundation floor area as well as the roof construction would be the same, also the volume is increased on account of greater heights, therefore, the unit of value of such 45393
building should be considerably less.

Q. On your schedule?

A. Yes, the unit of value computed as it is is very little less.

Q. Now, take the 111th Street exhauster house to which he referred, Mr. Edgerton, in his estimate has put brick at $14 per thousand laid. What is the actual cost?

A. $25 a thousand.

Q. He has stated stone footings, estimated at 90

cents per cubic foot. What is the actual cost per cubic foot?

A. The actual cost is $1.40 per cubic foot.

Q. He has estimated flooring at $40 per thousand feet board measure. What have you to say as to that?

A. The cost of the material alone is $42 without any labor attached.

Q. And what would be the total cost per thousand feet including labor?

A. If it was double flooring the cost would be $82 per thousand feet laid.

45395

Q. What is the cost of labor per thousand feet for single flooring and double flooring?

A. About $20 per thousand feet board measure.

Q. Single or double?

A. Single.

Q. And $40 for double?

A. Yes.

Q. He has estimated yellow pine girders at $40 per thousand feet board measure. What do you say as to that?

A. The actual cost of the material would hardly be covered by that estimate without any labor. I have quotations for the same kind of lumber at present at $45 per thousand feet.

45396

Q. Now, he has inserted steel checkered floor plates at 5 cents a pound, does that cover the cost of such floor plates?

A. The material cost alone at present is 3 1/2 cents per pound, and the cost of labor to lay the plates including the fitting and cutting is 1 3/4 cents per pound making a total actual cost without any profit to the contractor of 5 1/4 cents per pound.

Q. That includes all waste that may arise in cutting?

A. Any waste in fitting and cutting.

Q. Did you find that Mr. Edgerton has allowed anything for excavation for this building?

A. No, I believe that Mr. Edgerton omitted the entire item of excavation for this building.

By Mr. Kirby:

Q. What building are you now referring to?

Mr. Mathewson: This same building, 111th Street.

By Mr. Mathewson:

Q. Now, in the same estimates Mr. Edgerton has allowed cost of 50 cents per cubic yard in the in- 45398
stance of the 132nd Street governor and boiler house and in another instance he has applied the figure of $1.00 per cubic yard. What is the average cost for deep excavation of this character, as required in such buildings?

A. Not less than $1.25 including the cost of disposing of the earth, the dumping privileges, etc.

Q. Do you find in any of Mr. Edgerton's estimates that he has made an allowance for the contractor's expenses, for his office force, draftsmen, scaffolding, shop, wear and tear on tools and appliances, etc.?

A. He has not.

Q. What percentage of the value of the cost of work 45399
of this kind in your experience in this character of building should be allowed for those items?

A. It would not come less than 10% on the actual cost of the work.

Q. Now, Dr. Marks in substantially all cases has assumed your cost of apparatuses and holders to be correct, but in some few instances he differs with you, and with Mr. Edgerton he differs in many instances. Now, taking up Mr. Edgerton's statement as to holders, do you find that he has submitted any detailed estimates as to the cost of holders including guide frames?

A. He has not.

Q. At page 5347 he states that one-third of the cost of the holder is an ample allowance for the cost of the guide frame. What have you to say as to that proposition, Mr. Mayer?

A. I can only say that such estimate is absolutely erroneous. Some 25 to 30 years ago it was the intention to have the various gas holders uniform in their construction, and at that time they endeavored to use a column in the guide frame for every ten feet in diameter of the holder, but such were only
45401 endeavors and could never be carried out with any kind of certainty. For instance a holder 60 feet in diameter would have 6 columns, one 70 feet would have 7 columns, one 80 feet 8 columns, etc. Now, there were no holders built at that time with an uneven number of columns in the guide frame. Why that was so I cannot explain, but, nevertheless, it was the fact, and in the very instance of the Consolidated works a glaring example of this kind exists which will prove positively that Mr. Edgerton's assumption that the guide frame of the holder amounts to one-third the cost of the holder is impossible. For instance, the four holders at the 21st Street station of 400,000
45402 feet capacity are constructed in three lifts with an outer section of 88 feet in diameter. These holders have 16 cast iron columns in the guide frame. At the same station there are six holders each of 345,500 cubic feet capacity constructed in two lifts, the outer section of these holders is 95 feet in diameter. These holders have guide frames consisting of only eight cast iron columns.

Q. The diameter is greater, but the number of columns is only half as many?

A. The diameter is greater, but the number of columns is only half as many. The two holders of

45403

250,000 cubic feet capacity at the same station are constructed in two lifts with 84 feet in diameter, and the guide frame only contains six columns, so that it will be seen that the maximum variation in the diameters of the different holders as between 84 and 95 is only 11 feet, whereas the variation in the number of columns amounts to over 100 per cent, and such difference excludes all possibility of applying a general rule which assumes the cost of the guide frame to the holder is one-third of the cost of the holder itself.

45404

Q. Now, if the valuation of the various holders (including guide frames) by Mr. Edgerton is based on the assumption of such proportionate values between the guide frames and the holders, would that be sufficient to account for the entire difference between Mr. Edgerton's and your own valuation as to the value of the holders?

A. No, I think it would account for a great deal more than that.

Q. And is the same true of the other cases in which differences of value exist where such a general rule has been applied by Mr. Edgerton?

A. It is so.

45405

Q. Now, what were your values on holders and apparatuses, with which Mr. Edgerton disagrees, based on?

A. My valuations for holders and apparatuses are all based on actual detailed estimates. Of course it was impossible for me to make any such detailed estimates in the time at my disposal during my examination of the plants, but as I had access to all the detailed estimates of the firm of Bartlett, Hayward & Co., with which I was formerly connected and which estimates are an accumulation of over 25 years, made partly by myself or under my personal

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direction, I was thoroughly familiar with applying them to the apparatuses in question at the works of the Consolidated Gas Company.

Q. Now, in giving your estimates of the value of holders, for instance, did you ever make or did you have before you detailed estimates in each case showing the actual cost of such holders or of holders of the same character which you could exchange as might be required for existing conditions of material or labor?

A. Yes, I had the actual detailed estimates of
45407 weight, to which I applied the prices under New York conditions as they existed last summer.

Q. Now, do you mean merely estimated weights or actual shipping weights.

A. I had both.

Q. Where Bartlett, Hayward & Co., for instance, installed any part of the holders or installed a holder of the same kind, did they keep a record of the actual weight of the holder?

A. Absolutely a record of the actual cost.

Q. Were holders ever erected by you or under your personal supervision?

A. They were all constructed under my personal
45408 supervision.

Q. And did you have access to all this in making up your estimates?

A. I did.

Mr. Kirby: I submit, Mr. Master, this is not proper rebuttal. I object to this line of questioning to these details upon which Mr. Mayer based his conclusion as set down in his direct testimony unless an opportunity be given to Mr. Edgerton to go upon the stand and show his details.

Mr. Mathewson: I don't propose to put in evi-

dence these details as to each holder and piece of apparatus; I am merely now calling the attention of the Court to the method by which this witness reached his estimate to rebut the defendants' assumption that his estimates are incorrect. 45409

Mr. Kirby: If it were to be brought out in this case it should have been brought out on his direct-examination, it seems to me.

Mr. Burr: It seems to me that it is quite apparent that this testimony should have been given in the direct testimony and if it is intended as a statement now it seems there was no information as to the sizes, the actual weights or the cost of holders, it was not furnished to me, and it should have been, in justice to us, we should have had the foundation, and the basis of his figures and in the valuation of these buildings, then we would have had a proper opportunity to have criticised or gone in detail into the merits of these figures. 45410

The Master: Why wasn't it done. Why didn't you bring that out on cross-examination? It might be a serious question as to whether if Mr. Mathewson had chosen to bring out these facts on the direct-examination of his witness, his own expert whether you might not have objected to it on the ground that the reasons for his opinion as an expert are not properly brought out as a part of his direct-examination. Now, if Mr. Mathewson didn't bring that out on direct and you didn't bring that out on your cross, and it comes up that the witness's method of valuation is not attacked by your witnesses, why can't he show generally the care which he took, or the methods he followed in arriving at his results. I quite agree with you that it is not at all proper to put in evidence any of these materials that he used, these detail drawings, etc., these specifica- 45411

tions, etc., I don't understand that Mr. Mathewson is offering them.

Mr. Burr: I understand the only object in referring to them is to confirm the correctness of the valuations he gave before, since his last appearance here. He has testified as to the values he has given, that he made detailed estimates, consulted drawings which were made at the time in some cases, all of which seems to me is not proper rebuttal unless we have the opportunity to go into it very fully.

45413 Mr. Kirby: His method has not been attacked, his conclusions have been attacked.

The Master: I will allow this line of testimony insofar as it is broad and general, but not in detail. I think you are right about that. It is a very close question anyway as to what is proper.

Mr. Kirby: I except.

Mr. Burr: I except.

Q. What proportion of the detailed apparatus would you say Mr. Mayer, in your valuation consists of apparatus upon which you computed the weights, and respecting which you had exact weights or procured exact weights one way or another as distinguished

45414 from the stock items like boilers and things of that sort which are built by special builders and not particularly by Bartlett, Hayward & Company?

A. Well, all apparatus at the plant as compared with the other items for which I was compelled to obtain prices from the manufacturer which manufactured such articles, would cover probably not less than 96 to 97 per cent of the cost of the apparatus or plant.

Q. And where Mr. Edgerton differs from your weights are your weights of apparatus estimated or assumed, or are they the actual result of your knowledge and your experience?

A. The actual result of knowledge based upon my own experience.

Q. As to the three or four per cent consisting of boilers, etc., have you bought and installed boilers from time to time?

A. Many of them.

Q. In your estimates which have been attacked by Mr. Edgerton, in regard to these items, did you in addition to your own knowledge make any inquiry at the time of the manufacturers as to the prices at which the boilers could be installed?

A. I so stated that in my testimony. 45416

Q. As an illustration, Mr. Mayer, have you here a sheet showing the detail in which it is necessary to go, and into which Mr. Edgerton did not go, to make an exact estimate of the cost of a gas holder?

A. I have.

Q. This estimate is a hypothetical holder of the type of the 132nd Street holder, five million cubic feet—

A. It is of the same dimensions, but slightly less in pressure, I think.

Q. Now, does this detail which I hold in my hand, show the detail into which it is necessary to go to give an exact estimate of the holder? 45417

A. Yes.

Q. In making an estimate of the value of these different apparatuses how do you proceed as compared to the way in which you would proceed to make a bid for furnishing such apparatuses?

A. Identically in the same manner.

Mr. Mathewson: I offer this paper in evidence as an illustration of the detail into which the witness says it is necessary to go to get the actual value of a holder. This is not an estimate of the 132nd Street holder, but illustrative

of what it is necessary to do to get the exact value of the holder, but Mr. Edgerton stated on the stand that he did not do that.

Mr. Kirby: What Mr. Edgerton stated on the stand is in the testimony.

Mr. Burr: Isn't this merely a bill of material?

Mr. Mathewson: This is an estimate in detail of the weights to which in figures the price for material and cost of labor have to be applied to suit conditions at the time each piece of work is installed, the actual price.

45419 Mr. Burr: This simply shows the material used in the holder?

A. Yes. Shows the weights of material and each class of material.

By the Master:

Q. Is there anything in this paper which differentiates the cost of guide frames from the cost of the holder?

A. Yes.

Q. Can you pick it out?

A. Yes, sir (witness exhibits same to Master).

By Mr. Mathewson:

Q. I ask you at this point whether it is possible to

45420 make an exact estimate of the cost of a holder on other pieces of apparatus constituting these other 96 per cent to which you have referred without going into a detailed estimate of the same general character as you have presented here and which you have shown to the Master.

A. I consider it absolutely impossible. All the factors have to be based on the weights, and such factors cannot be determined unless the weight is known.

By Mr. Burr:

Q. Where did you get the weights which appear in this hypothetical holder?

45421

A. From the former estimates for a holder of those exact dimensions.

Q. That was not open to Mr. Edgerton for inspection, was it?

A. Oh, no.

Mr. Mathewson: It would have been if you had cross-examined him on the subject and brought it out.

Q. Have you that estimate now?

A. Here it is.

Mr. Burr: If you remember, Mr. Master, you will recall that we called on the other side for 45422
the particulars of the construction of these holders and never could get them. Now, it is not fair that at this last moment they should present here an estimate of the cost of construction of these holders without giving us a chance to go into the whole subject.

Mr. Mathewson: You mistake, Mr. Burr. I am not offering any such thing. Unless I am mistaken your witness testified that he didn't make such detailed estimate of such apparatus. Mr. Mayer testified it is not possible except from such detailed estimate to make an estimate of the values. Then he says what sort of an esti- 45423
mate it is necessary to make. It is perfectly obvious. Your witnesses never could go into the details in the time at their disposal. Even if they attempted to they could not. I am not going to put in the estimates of these various holders.

Mr. Kirby: Such details as our witnesses went into have not been spread upon the record. They should be spread upon the record, as I stated before. There are reams of it.

The Master: Don't discuss it. If you object I will rule upon it.

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Mr. Burr: I object to that as incompetent and immaterial and not proper rebuttal.

The Master: I don't see that it is proper rebuttal, except insofar that Mr. Edgerton may have given general testimony about the methods to be followed in getting at the cost of the holders; and I don't see any such general testimony here except in that single case of the cost of the guide frames, and that, I understand, you have already covered. This table which you have here covers a great deal more than that guide frame
45425 question. Mr. Edgerton did say here that one-third of the cost of the steel was considered an ample allowance for the guide frame. That, of course, is the sort of thing you are entitled to meet on rebuttal; but I think most of this goes further than that. It simply goes to show that the methods adopted by your witnesses was better and more accurate than the method adopted by the other witnesses.

Mr. Mathewson: Where our method is criticised I am not entitled to meet such criticism?

The Master: I don't find that he specifically attacked Mr. Mayer's method.

45426 By Mr. Mathewson:

Q. Have you examined Mr. Mayer's testimony as to the manner in which he found the valuation?

A. Yes.

Mr. Mathewson: Then may I have this marked in for identification, and then tomorrow morning I will renew the offer. I think I can show the Master then the testimony which rendered it admissible.

The Master: I think so much of that as goes into this question of allowance for guide frame is

proper, but there is so much else in it, I have very serious doubt about it.

Marked for identification, Complainant's Exhibit 374, January 30, 1907, E. C., Jr., steno.

Mr. Burr: I say in reference to the testimony of Dr. Marks, in connection with holders he has practically accepted the figures of Mr. Mayer as being correct, he differs with him, however, in the depreciation principal.

Mr. Mathewson: In reference to the detailed estimate of a holder of the character of the 132nd street holder, such detail figuring would consume 45428
a great many pages according to the exhibit "for identification 374." I will withdraw that last question, on which the main question is based. It may be rendered unnecessary.

Q. My question, Mr. Mayer, is, whether in reference to other items of apparatus, excluding the stock items like boilers, etc., you consider it necessary to get an exact estimate, to go into a like detailed computation?

A. It is even more so with the other apparatus than in the instance of the holders.

Q. Mr. Edgerton spoke of double riveted covers for purifiers as something unique or different. What is 45429
the fact?

A. Well, all large purifier covers must necessarily be double riveted on account of the interior strain.

Q. How about the New Astoria?

A. Are all double riveted and could not be otherwise.

Q. In the case of smaller holders do you consider it better or poorer construction?

A. It is better, but not necessary.

Q. Mr. Edgerton spoke of the 14th Street as a

dilapidated old plant. You examined the plant, did you not?

A. I did.

Q. What have you to say as to that suggestion of Mr. Edgerton's?

A. I find that the plant has been operated and is being operated to the full capacity and at economical rates, therefore it could not be dilapidated.

Q. Now, Mr. Logan in his testimony, stated that in many cases his values were higher than yours, and in other cases substantially the same, and in some
45431 cases it was below your valuation, do you find his difference was due to the difference in the weights which were assumed for the apparatuses or due to other reasons?

A. That is the only reason I can assume, that his weights differ from mine.

Q. Well, you observed in his testimony that he was assuming the weights which he employed in such cases?

A. Yes, I remember that.

Q. And assuming the weights that you actually found, and his unit figures, how would his values compare with yours?

A. Would be the same about, excepting—

45432 Q. Now, without going into the details as to each structure do you find that Mr. Edgerton in his estimates generally as to the value of similar factors of cost to those to which I have called your attention, I mean by similar factors the cost of board, the cost of excavation, the cost of brick laying, etc.—in other words has he made the same errors and omissions generally throughout, or are those individual instances?

A. No, the same errors and omissions are made throughout but they vary in some instances. They are not always the same in each estimate.

Q. Do you consider these errors fundamental, or are they merely of slight account?

A. No, they are errors which would absolutely give a wrong impression concerning the value of such buildings and construction.

Q. What then do you say generally concerning his estimates of value of buildings, and apparatuses wherever they fall below your figures?

A. I can only say that these estimates have not been made upon any knowledge of expenses and conditions as they exist in New York, and therefore I cannot accept them as being fair valuations.

Q. As to pipe connections Mr. Edgerton suggested that a new plant could be constructed with fewer pipe 45434
connections than those called for in your valuations. Even if you constructed a plant with the connection which Mr. Edgerton suggested, could in your judgment, the connections for such plants as the Consolidated possesses be constructed on his theories on the figures he gives?

A. No, sir, or nothing like it.

Q. Is it a fact that modern plants as they are constructed contain single pipe system connections?

A. All modern plants contain at least a double system, and in some instances like in the New Astoria we have four lines of pipe from the retort house to the condenser house to act as condensing mains to 45435
assist atmospheric condensation.

Q. Between the retort house and the condenser house?

A. Yes.

Q. Now, if the old mains had been maintained in the plants of the Consolidated Gas Company, as the connections had additional lines laid, would that indicate any antiqrated or out-of-date or improper construction?

A. I doubt that additions to existing plant could be made when the plant is to be kept in operation with-

out simply adding to the existing mains and making the existing mains a part of the reconstructed plant.

Q. Now, so far as you have observed, what about the connections, were they in use or not?

A. As far as I was able to ascertain and as far as I was able to see they were all in use.

Q. Where you have several lines of connections would it, in your judgment, be wise or economical to throw out these smaller connections in order to put in new and larger ones?

Mr. Burr: I object to that. I think it is

45437 opening the door—

Mr. Mathewson: Mr. Edgerton criticised the connections and cut them from 21,000 down to 12,000 each.

The Master: Objection overruled.

Mr. Burr: I except.

Mr. Kirby: I except.

The Witness: No, it would not be wise for the reason that you would be compelled to shut down the plant.

Q. What would you do, add additional connections, and keep what you had?

A. There is no other way of adding to a plant that

45438 has to be kept in operation, as I have said.

Q. In reference to these items of holders, etc., which you have valued how many of them did you see personally?

A. I saw them all.

Q. Now, as to your estimate of the cost of labor in the City of New York, did you act on hearsay, or from actual experience and knowledge.

Mr. Burr: One moment. I think this is direct examination. You have examined him and re-examined him as to the basis on which he fixed the cost of labor.

Mr. Mathewson: Mr. Edgerton has testified he got information from these sources and other sources and asked Tom, Dick and Harry, and I ask this witness whether his conclusion is based on estimate and hearsay or else on experience and knowledge.

The Master: I don't think it is rebuttal.

Q. In addition to your examination of the plant of the Consolidated at this time for the purpose of an appraisal, have you had any knowledge of the facts?

Mr. Burr: I object to that as already testified to. 45440

The Master: Objection sustained.

Mr. Mathewson: I except.

Q. Do you find that even as it was and at the time then at your disposal you included all the buildings and apparatus of the company—

Mr. Kirby: I object to that.

Q. (Continuing.) In your estimate of valuation.

Mr. Burr: Same objection.

Overruled. Exception.

The Witness: I did, with the exception of two buildings; one was the so-called Avenue A shop at the 21st Street works, and the other one was the 66th Street shop. 45441

Mr. Mathewson: I am not going to ask this witness these valuations, but to indicate the fact merely that in the estimate he did not include them.

Q. Now, Mr. Mayer, the witnesses for the defense in some instances referred to various pieces of apparatus, as for instance scrubbers, as scrubbers are used, ordinarily used, is it a fact that all scrubbers are made by the same concern or in the same way when they deal with the same capacity?

A. No, not at all, it depends entirely upon the different construction of the various firms.

45442

Q. Is it possible taking any piece of apparatus of that character to compute its value without knowing the exact weight or measuring the exact weight?

A. No, as I stated before, you cannot.

Q. Now, you have given a certain valuation of the plant new as something over sixteen million dollars, and you have given the valuation of a plant taking out your depreciation in *toto* at something over $15,500,000, as I recollect—

A. It is something like that.

Q. Upon what theory did you compute the depreciation?

45443

Mr. Burr: He has already testified as to that.

Mr. Mathewson: Wait a minute, let us see whether he has or not.

Mr. Kirby: If he has not, he cannot do so now.

Mr. Burr: Point out just exactly where he did testify to that.

Mr. Mathewson: Have you any objection to it?

Mr. Kirby: I have.

Mr. Burr: I object to it on the ground that it has already been testified to, the method of

45444 arriving at his depreciation, and the method by which he arrived at the cost of engineering.

Q. Referring to the depreciation computations of Dr. Marks and Mr. Edgerton and your knowledge of the plant, I will ask you whether or not in your judgment for the difference between your valuations given today, to which I have referred and the valuations as depreciated, to which I have referred, the plants could be put in condition as good as new?

A. In my valuation, you mean?

Q. Yes.

A. Yes, they can.

Q. In your experience is it easy to judge the depreciation of a building from appearances, simply outside appearances?

A. Unless such judgment of depreciation is performed by a man experienced in the detail of the estimated cost of repairs I should say that he would be unable to judge depreciation by appearances.

Q. Isn't it a fact that frequently a very small expenditure for pointing up and other items relating to outside appearances makes a building as good as new?

A. It is very often the fact.

Q. Have you ever estimated for repairs and alterations in bringing apparatus up to efficient working order? 45446

Mr. Burr: I make the same objection. It is incompetent, immaterial and not rebuttal.

The Master: That is good, Mr. Mathewson.

Mr. Mathewson: It seems to me that is proper. He said that the difference between his point of view and depreciated value would make the plant as good as new.

The Master: The question is objected to and I think here it is clearly objectionable. I will allow you to ask him merely as to Dr. Marks and Mr. Edgerton's method of arriving at values, and let him point out their defects. 45447

Q. How long have you been estimating for repairs and alterations in gas apparatuses?

Mr. Kirby: I object to that.

Mr. Mathewson: Why?

Mr. Kirby: If it was not brought out before, it should not be brought out now.

The Master: Objection sustained.

Mr. Mathewson: I ask for the answer.

A. Over 25 years.

Q. Now, did you observe that Mr. Edgerton's de-

preciation for both the old and new U. G. I. stations which had been many years in operation as 10 per cent?

A. I did.

Q. What do you observe for his depreciation at 132nd Street as compared with other holders?

A. Where the holder is entirely new, as I remember it the depreciation is marked 5 per cent. Then there was a holder at I think 63rd Street which I constructed in 1889 or 1888, I have forgotten which, at any rate it is seventeen or eighteen years old, and
45449 the depreciation is the same 5 per cent.

Q. Now, did you hear the testimony of Mr. Edgerton and Mr. Marks, or have you read it as to the time which was devoted by them to the examination of these plants?

A. I have.

Q. I will ask you whether in your judgment it is possible in an examination of that length to go into the details of construction or make such an examination as to give even an approximately exact cost of such a plant?

A. I know that I should not be able myself within that time to give even a rough guess it would be ab-
45450 solutely impossible.

Q. Have you made a computation as to the number of hours that you and your assistants put in in examining these plants for the purpose of your testimony and estimate originally?

Mr. Burr: I object to that as already in the testimony.

A. I have.

Q. How many?

A. My own time and that which my assistants actually spent at the various works was 3,780 hours.

Q. And were your assistants men familiar or unfamiliar with gas apparatuses?

A. They were all draughtsmen and engineers, picked for that particular purpose and had been working with me for years and they were familiar with all the details of construction. Without such men I could not have accomplished it even in that time.

Q. Could you have accomplished it in that time with these men that result if you had not had the benefit of the estimates and drawings which had been placed at your disposal?

A. It would have been impossible even in that time. 45452
It could not have been done within 12 months with more men if I had not had these estimates and drawings at my disposal.

Q. Did you compute from the testimony the number of hours occupied by Mr. Edgerton and Dr. Marks?

A. I have.

Q. Well, how many hours, about?

A. Dr. Marks has been 84 hours at the works and Mr. Edgerton 50 hours.

Mr. Mathewson: That is all except that I will call the Master's attention tomorrow to this Exhibit 374 for identification. I reserve that right. 45453

Cross-examination by Mr. Kirby:

Q. What did you take into account, Mr. Mayer, when you computed the number of hours that Mr. Edgerton put in in making his appraisal of these plants?

A. His testimony as he gave it when I was sitting over there.

Q. The times spent at the plant?

A. Yes.

Q. Anything else?

A. No. You could not examine apparatus any other place except at the plant.

45454

Q. Did you consider the time of any one who was assisting him?

A. Only his own time.

Q. In your total of 3,780 hours do you include any body's time but your own?

A. That of my assistants.

Q. You do not include Mr. Edgerton's assistants?

A. I don't know that he had any.

Q. Or of Dr. Marks' assistants?

A. I didn't know that he had any.

Q. I presume in figuring depreciation the conditions as well as the age of the apparatuses has much to do with the factor employed, does it not?

45455

A. The condition has, the age has not—

Q. Well, it might well be a new U. G. I. apparatus of 1906, and an old one of 1884, would have the same depreciation factor, would it not?

A. No, it would not.

Q. If age has nothing to do with the appearance, or rather conditions as observed, how do you come to the conclusion that there might not be the same depreciation?

A. Because in every instance the apparatuses are kept up to their full working and operating condition.

Q. Then you assume that—

45456

A. I know it, because if it was not the case it could not be operated.

Q. You assume it from your knowledge of these apparatuses?

A. Yes, I know from my observations of these apparatuses.

Q. All these U. G. I. apparatuses are in use from day to day?

A. Yes, sir.

Q. And in the use of the fire brick and such por-

tions as are subject to heat are depreciated, are they not?

A. Yes.

Q. And being new lined today they would be more valuable than a week from today, would they not?

A. Well, there would probably be a slight deterioration, yes, which would be wiped out the next time they were repaired.

Q. But needing repair at any time before those repairs are made they have less values than at a period immediately after the repairs have been made, have they not.

45458

A. At that immediate moment, yes.

Q. Such is also true of holders, is it not? Do holders ever need repairs?

A. Very seldom, only such holders as are defective in construction. I don't know that we ever repaired a holder we constructed ourselves.

Q. Do they last forever?

A. I don't know how long they last.

Q. Isn't it a fact that some times the tops rust out or become so defective that new plates have to be put in, or repairs made in some way?

A. Not if the gas is properly purified or the painting on the outside properly taken care of.

45459

Q. Are all holders properly painted, and is all gas properly purified so that it will not in any way affect the material of which the holder is made?

A. It is for the Consolidated Gas Company in New York.

Q. Have you examined the holders at 65th Street?

A. Yes, sir.

Q. Are you aware that on the side of these holders paint for a space of yards or more at various places has come off?

A. Not at the time I examined it, no.

45460 Frederick J. Mayer, Cross.

Q. Paint does peel off from the holders from time to time, does it not?

A. When there is bad paint used or bad water in the tank, yes, sir.

Q. Did you consider that the holders at 14th Street at the time you examined them were properly painted?

A. They were.

Q. They needed no painting of any kind?

A. No.

Q. Where did you get your information from in reference to Mr. Edgerton assuming that the cost
45461 of the frame was one-third that of the holder?

A. From his testimony.

Q. Did you notice how many holders out of all these he proceeded to use such an estimate for?

A. How many what?

Q. How many holders out of all these did he proceed to use such an estimate for?

A. He didn't give any detailed estimate of the holders, therefore, I assume he assumed the same estimate for all of them.

Q. Now, I refer you to Mr. Edgerton's testimony at pages 5346 and 5347, to the question at the top of page 5347: "Q. Did you measure those guide
45462 frames and compute their value? A. I did. Q. And computed their weight? A. Yes, sir. Q. Now, let us have the details of that computation? A. Haven't anything more here than 164,700 at four cents, cast-iron girders 16,150 pounds and guide rails 960 pounds."

Q. Did you read that part of Mr. Edgerton's testimony?

A. I did.

Q. And did you consider that in estimating the value of the guide frame, did you consider that one-third?

A. No, I considered nothing except that he did not give enough information—

Q. I understood you to say that Mr. Edgerton in all expenses going to his cost as to all guide frames of holders estimated that the guide frame was a third of the holders.

A. I assume he did, because he did not—

Q. That was because of the fact that on examination he did not go into the details used in giving the valuation that you assumed he took one-third of the cost of the holders as the cost of the guide frames?

A. No, because he could not have measured his 45464
guide frame any other way.

Q. Do you know how many times Mr. Edgerton went to these different stations and examined these guide frames?

A. It would take him not less than three days with one man to measure each guide frame in one holder.

Q. Would Mr. Edgerton have to measure each member of that guide frame?

A. He would.

Q. He could not take one section, measure the members of that section and assume the rest were the same?

A. Yes, if he went on that section of the holder 45465
from the top to the bottom, but they vary.

Q. But if he measured the sizes from top to bottom, wouldn't it be possible for him to come to a conclusion as to the value of such guide frames?

A. It would not have been possible for him to have measured them in the time at his disposal.

Q. Then your answers depend upon what you consider impossible for Mr. Edgerton to have done in the time at his disposal in the way of making measurements which would have enabled him to make an appraisal?

A. No assumption about it. I know from my own experience he couldn't have done it.

Q. Assume that Mr. Edgerton measured the lowest of the three members of this guide frame, for the sake of getting the weight of the frame, and gave them the benefit of the doubt and used that weight to the top; would he be giving a value that would be too great or too small, or a weight which would be too great or too small?

A. Well, if he assumed the bottom member of the guide frame to constitute the entire guide frame and
45467 provided his calculations were correct and he would not increase the error 12 or 24 or 10 times or as many panels as there are in the guide frame, but if he should make an error in that instance he would simply have that error 24 times, if there were 24 panels.

Q. Now, the error would be in the direction of making the guide frame too heavy?

A. Not at all, it might be just in the other direction.

Q. Aren't they heavier as you come near the ground?

A. If his estimate is correct—

Q. Then your whole testimony here is that Mr. Edgerton in the time at his disposal could not make
45468 an examination of the plant and make measurements, but if he did make measurements they were not correct measurements?

A. I know they were not correct as far as he did give them.

Q. From such weights as you have been able to get from the testimony?

A. Yes, they are not correct.

Q. Have you looked at his weight of the guide frame for the 68th Street—

A. I don't recall it just now. I was attempting to give the testimony

Q. Having done so at that time did you not come to the conclusion that the weight which he gave there was enough higher than that which the guide frame actually is—

A. I cannot recall that until I go over the testimony.

Q. Now, in your measurement of the dimensions of the members of this guide frame did you, as Mr. Edgerton did, take callipers and rules and micrometers and use such precautions to see that you got the right and proper dimensions of the guide frame?

A. If I had done that I would have made the same errors that Mr. Edgerton made. I have built most 45470
of these and know—

Q. Then it is impossible to go to a guide frame and make measurements and find out the size of the material that enters therein?

A. No, it is not impossible to do it, but you have to climb up in the air about 250 feet to do it, and it takes considerable time to do it.

Q. Have you consulted the employees of the Consolidated Gas Company to find out whether Mr. Edgerton did not climb up some 250 feet in the air to make these measurements?

A. It was not necessary to do so. I know he did not. 45471

Q. Do you know whether he did or not?

A. No.

Q. Do you know how many times it is necessary to climb up 250 feet to make these measurements?

A. No. But no man can do it in fifty hours.

Adjourned at 5:45 P. M., to Thursday, January 31st at 11 A. M.

Last exhibits: Complainant's, 374. Other exhibits same as last hearing.

45472

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

CONSOLIDATED GAS COMPANY OF NEW YORK,
Complainant,

vs.

JULIUS M. MAYER, as Attorney General of the State of New York; WILLIAM TRAVERS JEROME, as District Attorney of New York County; FREDERICK E. GUNNISON, JOHN C. DAVIES and LUCIAN L. SHEDDEN, constituting the New York State Commission of Gas and Electricity, and THE CITY OF NEW YORK,
Defendants.

45473

Before: ARTHUR H. MASTEN, Special Master.

45474 NEW YORK, January 31, 1907, 11:00 A. M.

Met pursuant to adjournment.

Present:

THE MASTER.
MR. MATHEWSON.
MR. KIRBY.
MR. BURR.

Mr. Burr: I think I might occupy some time in straightening out the matter of the real estate, which has got to be done before we close this

45475

case or else I will withdraw the stipulation which I entered into with you.

Mr. Mathewson: What do you mean? I don't know what you are talking about.

Mr. Burr: I will tell you. That is the reason I will avail myself of this lull to tell you.

Mr. Mathewson: I don't know of any stipulation that I have violated, or that I am prepared to cancel.

Mr. Burr: Our time is becoming very limited and I cannot afford to lose a moment. You remember some time ago, Mr. Master, I called your attention to the stipulation which Mr. Mathewson 45476
evidently intended to enter into that was made, waiving the technical objection to the grants and the maps, but it appears in the record it simply refers to the grants. When we afterwards sought to have that corrected by including the stipulation as to maps, certain conditions were exacted from us with which we cannot comply. Now, I will call your attention to exactly what happened in that regard. On page 4277 of the record, on the introduction of the City's Exhibit 76, Mr. Mathewson used the following language: "I object to it as not proven." This objection was overruled and exceptions taken (page 4278). 45477
Similar objections were made to Exhibits 77, 78, 79 and 80. On page 4282, Mr. Master, on this subject, the following discussion took place:

"Mr. Mathewson: There is no question but what these water rights were substantially vested in the Consolidated Gas Company."

Mr. Mathewson: That word "substantially" should be subsequently.

Mr. Burr: Yes, subsequently. I won't read all. That is on page 4284, but it is manifest that the intention was to have this stipulation

47478

cover objections made to the maps as well as to the grants. It seems to me we are entitled to this correction and in the event of its refusal we desire to withdraw our stipulation and require the Gas Company to prove the mean conveyance.

Mr. Mathewson: What are you referring to?

Mr. Burr: Simply that without the word "maps" here we would have to prove all these maps. We made a concession with regard to them and in consideration of that you consented we should not be put to the trouble of proving the maps and the grants, but the word "maps" 25479 was left out.

Mr. Mathewson: I remember generally that records were presented and that there was objection to them as not proven, as to execution or something of that sort, and that we withdrew the objection.

Mr. Burr: We entered into a stipulation with you.

Mr. Mathewson: Well, whatever it was it appears on the record.

Mr. Burr: It was on inadvertence that the word "maps" was left out of our stipulation.

The Master: Well, the maps were admitted. 45480 Mr. Burr.

Mr. Mathewson: Of course, any concession we made and any concession you made in that regard was for the purpose of this suit only.

Mr. Burr: If I recall, some days ago it was said, "if you submit a stipulation it will be all right," and I submitted one but there seems to be some hitch. I wish you would take it up yourself.

The Master: The maps were admitted and it appears that the man was here ready to prove them and I submitted them understanding that he

45481

was the proper custodian of the maps and the man would be called later, so as not to interrupt the witness on the stand at that time. Mr. Mathewson apparently having instead insisted on having him called, but he was not called, and I should think your rights are protected.

Mr. Burr: I do not say Mr. Mathewson is changing any stipulation that he meant to enter into at the time, but in the office of the attorneys for the complainant they evidently do not understand it as well as Mr. Mathewson does.

Mr. Mathewson: I assume some stipulation as to inserting the word "maps" between Mr. Burr's 45482
office and the office of Shearman & Sterling has been taken up, with which I am not familiar.

The Master: You will find that the record shows that Mr. Hatton was going away. Mr. Hatton, who was the man who brought the maps, was going to prove the custody of them and the office they came from and he was relieved from attendance. That apparently is a waiver of any objection.

Mr. Burr: Well, I didn't know. Because of the attitude of Shearman & Sterling I assumed that there was some legal objection.

I think it is proper to note that we have not 45483
as yet received the transcript of the testimony taken yesterday, and it is by a great effort that we are able to proceed at all to cross-examination upon the great mass of rebuttal testimony which has been put in so quickly.

Mr. Kirby: Not only that, but yesterday's exhibits, numbers *370*, *371*, *372* and *373* have not as yet been received although they were promised.

Mr. Mathewson: The delay is not attributable to us. I gave them to Mr. Carroll last night and

he was to deliver them by half-past nine this morning.

Mr. Kirby: We are not blaming anybody; but simply stating the fact.

FREDERICK MAYER, resumes the stand and further testified:

CROSS-EXAMINATION CONTINUED BY MR. KIRBY:

45485 Q. I understood you to say yesterday that you figured on the cost of labor and material for over 95 per cent of the apparatus you appraised in arriving at its value?

A. I did.

Q. How did you arrive at your values for the water gas apparatus?

A. I obtained those from the proposals from the United Gas & Improvement Company.

Q. In other words, you obtained bids from them?

A. Yes.

Q. So that that apparatus at least was not included in your 95 per cent?

45486 A. Not in the instance of the water gas plant for it was in the coal gas plant.

Q. In the coal gas plant you figured upon the material and labor for the construction of it?

A. Yes.

Q. I believe you also said you had access to the figures of Bartlett, Hayward & Company, of holders constructed in New York for the Consolidated Gas Company?

A. I did.

Q. So that you took advantage in making your appraisal of bids from the U. G. I. of Philadelphia and

Bartlett, Hayward & Company of New York on such apparatus as these concerns installed for gas companies?

A. Well, those of Bartlett, Hayward & Company were the actual estimates either by myself personally or under my direction.

Q. But no matter how they were made I understood it that they were not yours at the time of making this appraisal?

A. They were mine in a sense of the word, yes, because they were prepared by myself or under my direction. 45488

Q. But were in the possession of Bartlett, Hayward & Company with which you were no longer associated?

A. That is right.

Q. Now, I state to you that Mr. Edgerton's figures on holders were checked before their insertion in his proposal by the sales agent for three of the largest holder builders in this country. Assuming this was so would this in any way change your opinion as to the accuracy of Mr. Edgerton's values?

Mr. Mathewson: I have no objection to Mr. Kirby's putting an assumption to the witness, but to say I now "state to you," which is testimony of counsel, I do not think it is quite proper. 45489

Q. Then I will change the question and assuming say, that Mr. Edgerton before inserting the values obtained by him in his appraisal of holders submitted his figures to the sales agent of three of the largest holder builders in this country, and that these agents agreed with his values, would this in any way change your opinion as to the accuracy of Mr. Edgerton's figures?

A. No, it would confirm my opinion regarding the cost prices submitted by him for the reason that no matter who he referred to they were not familiar with New York conditions as nobody built holders in New

York for the last eight years except Bartlett, Hayward & Company, therefore they could not be familiar with New York conditions, and this would strengthen my valuation.

Q. Now, will you also assume that Mr. Edgerton had access to and examined the cost of material and labor and total cost erected of the original four small holders of the Mutual Gas Light Company of this City, has had access to the cost of the holder for the Standard Gas Light Company of this City, and had access to the cost of the 2,000,000 cubic feet holders
45491 of the Central Union Gas Works of this City, would this in any way change your opinion as to the accuracy of his figures?

A. Not at all, because my estimate was based upon conditions as they existed last summer. If he had access to such figures they were built under different conditions.

Q. Were all of Bartlett-Hayward's figures for holders built last summer?

A. No, they were for holders built within the last twenty-five years, only the prices were applied to conditions as existed last summer.

Q. I notice in a great many of your foundation
45492 estimates, in fact in the majority of them, that you estimated for piling under buildings of but twenty-eight feet in height. Is it usual to put any more than ample footings for such foundations?

A. It is. I have never built a building of that height for gas house purposes in ground that was bad and required reinforcement without any piling because I knew it would not stand.

Q. How did you arrive at your knowledge that there had been piling used in these cases?

A. I stated yesterday partly from drawings and partly from information that I could collect at the

works. Where there had been any drawings in existence for buildings under consideration I ascertained the necessity of pilings from drawings or other buildings in the immediate neighborhood.

Q. In your inspection of various buildings around the neighborhood did you notice the condition of the three-story building opposite the retort house on 14th Street and endeavor to ascertain whether piling was used in each of the walls of that building?

Mr. Mathewson: What kind of a building is that?

Mr. Kirby: Three-story brick building opposite the gas house in 14th Street. 45404

Mr. Mathewson: Was it a tenement house or part of a gas plant?

Mr. Kirby: Not part of a gas plant.

A. I did not.

Q. Would it surprise you to know that this three-story brick building has no pile foundation thereunder?

A. Not in the least. I have heard of tenement houses falling down for want of proper construction and proper foundation, and such construction certainly would not be done by the Consolidated Gas Company.

Q. Will you give me the buildings you did look at to ascertain if they had piling foundation thereunder, contiguous to the 14th Street works? 45405

A. I do not recall the drawings which were in existence for particular buildings. What I have in mind now is 21st Street. I don't know whether there were any bad conditions at the 14th Street station. It is too long ago to remember.

Q. I call your attention to the description of a one-story building, as set down in the schedule of appraisal, 14th Street station shed, one-story building, galvanized iron siding, 38 feet 3 by 31 feet by 11 feet 6, at underside of roof trusses, foundations 6 feet 6

below grade, consisting of brick walls and 12 by 12 inch coping, constructed of piles, space, 30-inch centres, in double rows; do you consider that a building of that size and weight demands a pile foundation?

A. I don't know what the original intention was as far as the purpose of that building is concerned.

Q. I ask you to consider that a building of that size, dimensions and weight demands a pile foundation?

A. Yes, I consider that no building could be built in that ground without a pile foundation, no matter
45497 how small it is.

Q. A shed or anything of that kind?

A. Yes, sir.

Q. Have you ever made any estimate of the weight which soil of this character would hold up without a pile foundation?

A. I have made many tests of ground of similar character, yes.

Q. And what weight do you think it would hold per square foot of area?

A. Well, I should not for a building or foundations of machinery place any weight upon it, because it may be hard in one spot and may be soft in another right
45498 alongside of it.

Q. Is there any apparatus in this one-story building, with galvanized iron sides, to which I have just called your attention?

A. No; I believe not. But I do not recall it.

Q. It has no basement?

A. No.

Q. Now, we can eliminate foundations for machinery and simply take the building by itself.

A. Yes.

Mr. Mathewson: What building is that. Will you give me just the description of it, what it is shown as?

Mr. Kirby: I have given you the description. It is known as a shed of the 14th Street station. The description I have given. I will repeat it if you would like to have it again.

Mr. Mathewson: No.

Mr. Kirby: The roof is galvanized iron or wood. Mr. Mayer has stated he is familiar with the character of the ground at 14th Street. I would like to know how much weight this ground would carry per square foot.

A. Why, I did not make any test of the carrying capacity of the ground at that particular location, but 45500
from the description you read and from the character of the ground I know that no weight should be placed upon it at all.

Q. No weight at all?

A. No weight of a building or anything like a building.

Q. Not even a shed?

A. Not even a shed, because that shed may be used for supporting a great deal of weight inside for storage purposes.

Q. You know the use to which this shed was put, don't you?

A. I don't recall it now; it is too long ago. 45501

Q. Let us assume that that was a shed which was not to be put to such use as holding great weights for storage purposes?

A. I would still claim the necessity of piling the walls.

Q. So that every building whether it was one-story or half a story or five stories, whether it was what is commonly known as a shed, or no matter what its weight was according to you would have to be piled?

A. It has to be piled.

Q. Notwithstanding the fact that across the street

you have a three-story brick building which has no piling under its foundations.

A. It would not affect my judgment at all.

Mr. Mathewson: No evidence in the case that there is such a building.

Q. Would it influence you in any way if this three-story building across the way to which you have made reference was a factory in which there was machinery?

A. Not at all.

Q. Do I take it that you assume that Mr. Edgerton in making his appraisal of these buildings did not com-
15503 pute on any piling for the foundations?

A. To the best of my recollection he stated he did not consider piling necessary and did not include it. Now, whether that was just in 14th Street or some other place, I don't recollect exactly; but it was in either one of the places.

Q. That is the only ground which you took for coming to your conclusion. Now if it be a fact that Mr. Edgerton merely stated that he did not consider a piling foundation necessary that would not indicate to you would it, that he had not estimated on piling in getting at his appraisal valuation, would it?

A. Not only that fact alone, but his detailed esti-
15504 mate did not show it, that he included any piling except in a few instances. In a general way, if I remember correctly, he said he made an estimate for piling, so many thousand dollars. Where that thousand dollars comes from or how he arrived at it, I don't know.

Q. But the mere fact that he stated piling, so many thousands, would indicate he had estimated on piling?

A. No, it would not indicate he had estimated at all, but that he made a wild guess.

Q. Well, call it whatever you may, but he included piling?

A. Only in a few instances as I remember his detailed estimate now.

Q. Point to the testimony and show me where you consider he has not included piling where you set it forth, as being under the buildings for foundations?

A. I referred to the detailed figures which he submitted and which I had to look over.

Q. Nothing in the testimony?

A. Yes, it was so stated in the testimony. I cannot refer to the pages. In many instances he said there was no piling there and why there shouldn't be any there. 45506

Q. That is quite true, but that is not testimony to the effect that he did not estimate on the cost of the piling?

A. If he was familiar with the structures and surrounding buildings and the consequent action on pipes in certain cases he would not consider that piling was unnecessary.

Q. I do not presume that there would have been for a gas works peculiar conditions existing so that they would require pilings, whilst a factory building to sustain a greater weight might not need piling?

A. A big difference between the two. The effect produced by the settlements might put the whole station— 45507

Q. That would apply to your one-story shed?

A. It would.

Q. In which there would be no pipes of any kind?

A. There might be. There might be some in the immediate neighborhood in the ground that would be affected by the settlements of the buildings.

Q. And presume there were no pipe contiguous, would that change your opinion?

A. Not at all. It would have to be piled if it is a building for a gas works.

Q. Did you notice that the brick wall around the holder yard at 14th Street and Avenue C leaned badly towards the street so that it had to be secured to the holder columns and anchored inside the yards to keep it from falling on the street?

A. I did.

Q. Did you notice in the 14th Street retort house that the truss girders of considerable depth was stretched across the retort house at a number of places and apparently introduced since the building of the house to keep the building from falling apart?

A. I did.

Q. Do you consider the roof of the purifier house at 42nd Street to be in good repair while at a number of points a good view of the sky can be had through the roof?

A. What is that, 42nd Street?

Q. Yes.

A. I don't recall that.

Q. Did you take any particular notice of the woodwork of the trestles in the 42nd Street yard?

A. Yes.

Q. Isn't that woodwork, all of it, as a matter of fact, in such a dilapidated condition, as well as the flooring above, as would call for a general condemnation of the whole of it?

A. No.

Q. What condition is the woodwork in?

A. I cannot recall exactly, but it is in condition as far as depreciation is concerned, according to the value of depreciation that I put it down at that time. It is impossible to remember all of those details now when the investigation was made several months ago.

Mr. Mathewson: I think that was the vast sum of $1,000 that was attributed to the trestle, or something like that.

Mr. Burr: You wasted a good deal of time upon $50 in this rebuttal, so that by comparison that sum is vast.

Mr. Mathewson: Perhaps I saved it. You won't save the thousand.

Q. Mr. Edgerton has estimated the cost of frame Phenix column holders at 63rd Street and 65th Street, at a value of $48,000 each, due to the extraordinary amount of iron introduced into that frame, thus making the cost of the frame nearly one-half the cost of the ironwork of the holder. Do you consider the introduction of this amount of iron into the frame excessive? 45512

A. Well, if you will refer to my valuation you will find that if there is a difference that this difference is due to either lack of weight in Mr. Edgerton's estimate or else by applying wrong prices. The values I have given are absolutely correct. I built both of those holders, too, I believe.

Q. What proportion do you consider the weight of the frame to be to the holder?

A. There is no fixed proportion.

Q. Of these holders I am talking about, these two specific holders at 63rd Street and 65th Street.

A. I could not make a guess at that. 45513

Q. But you built them?

A. I know, but that does not naturally enable me to make a guess as to what that weight was eight or ten years ago in proportion to the weight of the holder.

Q. You did not estimate that?

A. Of course, and that would vary with every style and detail of holder. There is no fixed proportion, therefore I cannot remember.

Q. In making your appraisal didn't you figure on these weights?

A. I did. I took it right from the original cost.

Q. But you cannot remember now what the proportion was?

A. Certainly not, because there are thousands and thousands of figures that I had to make.

Q. And you have not the information at hand?

A. Except in my valuation.

Q. Except as there, you haven't it?

A. No.

Mr. Mathewson: If you want the information as to what the weight of the frame was and the weight of the holder—

45315 The Witness: It is all in the testimony.

Mr. Mathewson: The witness can give it to you if you want him to refer to his notes, can't you, Mr. Mayer?

The Witness: Yes, it is in the testimony now, I think.

Mr. Kirby: No, it is not.

Q. What did you estimate as the weight of these holders, exclusive of their framings?

Mr. Mathewson: He said he did not estimate, but took the exact weight and knows what it is.

Mr. Kirby: Some of us call that an estimate.

Mr. Mathewson: It is not wise to do so.

45316 The Witness: That is the three-million-foot holder?

Q. Yes.

A. The weight of the holder is 1,204,640 pounds, the weight of the guide frame is 924,285; the weight of the pipe connections is 75,400. The total weight of the entire construction is 2,258,795 pounds.

Q. What did you figure the value of the holders to be exclusive of the guide frame?

A. I figured them altogether.

Q. So that in coming to your valuations for the holders you took all the weights and multiplied it by a certain factor?

A. I did, and that certain factor is based on the actual facts existing last summer.

Q. About that you have already testified?

A. I have testified and I believe given the details of how those factors were made up; the total was 7.1 cents per pound.

Q. So that the method of appraising these holders was as set down in your testimony and as just stated, obtaining the weights of the different parts and adding them together and multiplying by a certain factor?

A. Yes.

Q. Coming for a moment to the tanks which contain the holders. I ask you if it is not considered from an engineering point of view that it is considerably cheaper to construct a brick tank in rock excavation than in any other kind of material? 45518

A. No, it is very much more expensive. That is very plain on the face of it. When you have to excavate a whole mass of rock instead of earth it costs very much more.

I don't see how it could cheapen the tank any. You have to do the same excavation as in ordinary earth and then build the holder the same as in ordinary earth.

Q. Do you estimate the entire amount of rock? 45519

A. No, neither do you in earth where the earth is good.

Q. Do you excavate more rock than earth?

A. No more than you would in the instance of earth.

Q. As much?

A. As much.

Q. Would you excavate as much rock as you would earth?

A. As much as you would good earth, yes. There might be a slight difference in the cone remaining in the centre of the tank, but the blasting would remove

a great portion of the rock unintentionally which probably would remain there if it was not—

Q. But there is no drilling or blasting done for the purpose of removing the rock in the central part where the cone would be and where in an excavation in dirt the earth would have to be removed?

A. No that is not so. The rock would not have to be removed. The earth would remain in the same spot where the earth remains in the other instances.

Q. But the earth is not standing up as rock does, is it not a fact that more of it would have to be re-
45521 moved than rock?

A. I have already stated just now very slightly more because you cannot confine your explosions in blasting to a certain contour.

Q. But you endeavor to do so?

A. But you cannot; it is practically impossible. You always remove more than you intend and therefore the excavation is nearly like with good ground.

Q. Have you ever calculated the difference in the cubical contents which are removed from an excavation for a tank built in rock and one built in sand?

A. I have, in this very instance. The removal of the rock is based upon a drawing which is prepared
45522 for the special purpose of building the tank. Now blasting has got to be executed to the lines called for by that drawing and that gives the maximum amount of excavation of rock required.

Q. Yes, but in preparing the drawing for excavation in rock and also sand are the same distances and height of cone reached.

Mr. Mathewson: He said ordinary ground and not sand.

A. In the instance of sand you would have to excavate to the natural angle of repose of that particular material.

Q. And that is so in all soil?

A. It is so in rock, especially where you have rotten rock.

Q. But the angle in rock is much more vertical than it is in soil?

A. Yes, but I have already stated that you cannot carry out a vertical excavation and it is never done in gas holder tanks, this is due to the fact that the tank when completed must be absolutely tight. In order to make it tight you have got to cover the interior excavation and make the same tight with the covering of concrete or cement. Now, you cannot 45524
put concrete or cement into a vertically blasted rock wall, and in order to permit of applying the concrete you have to blast on an incline the same as you would in the cone in the instance of good ground. The tank that leaks through the crevices in the excavated rock not properly protected by the concrete, in other words, would be of no value.

Q. So that you require a certain angle to be set down for an excavation in rock?

A. We do.

Q. And a certain other angle to be set down for an excavation in sand?

A. Yes, sir, and another angle for another kind of 45525
dirt.

Q. But coming to steel tanks of modern construction I ask you if these could not be built for less than half the cost, including pile foundation, in place of the brick tanks now used for the small holders, which you have appraised at 14th Street, 42nd Street, 44th Street and 21st Street plants?

A. I am not prepared to say unless I investigate that question in detail and ascertain the details.

Q. What is your opinion about it?

A. As an engineer I have no opinion in matters of

that kind. I deal with positive facts only and by reference to my paper.

Q. Would you be prepared to state whether or not such steel tanks would cost as much as the brick tanks to which I have referred?

A. No, I think they would cost less than the four combined holders, including the brick tanks and in fact I know that is a fact because we have removed four holders and substituted them by a holder with steel tank on the same area.

Q. So you have at least some little opinion on the
4527 subject?

A. Well, a weak opinion which is of no value so far as comparison of values is concerned.

Mr. Mathewson: They might cost twice as much.

Q. Where do you think you could obtain a duplication of any one of these holders together with one-half the sum you have estimated to replace these holders?

A. I could not say that at all. It takes a good many references to figures to answer that.

Q. Speaking for a moment upon your 10 per cent engineering factors as opposed to Mr. Edgerton's 3
4528 per cent I presume that in undertaking an enterprise such as the replacing of the works of the Consolidated Gas Company, you would start out by employing engineers and draughtsmen and such as that to lay down the plant, would you not?

A. You mean from the standpoint of the contractor or the standpoint of the Gas Company?

Q. From the standpoint of the man who gets your 10 per cent.

Mr. Mathewson: If you were building the works. You mean the company, don't you, Mr. Kirby? That is, for a plant constructed for it?

Mr. Kirby: I don't care whether it is a company, individual, or what. Take the man who is getting this amount of ten per cent.

A. There is more than one who gets ten per cent. There is one ten per cent for the company and another ten per cent for the contractor.

Q. Yes, your final ten per cent you have spoken of and compared with Mr. Edgerton's three per cent.

A. The final ten per cent is expense incurred by the Gas Company.

The Gas Company employs continuously a force of 45530
engineers and draughtsmen numbering from fifty to seventy-five. That is about as big a force as I had under my direction as the chief engineer of the firm of Bartlett, Hayward & Company. It is this force of fifty to seventy-five engineers and draughtsmen and men that make up a very large portion, besides all the other items which I have enumerated in my testimony, of the ten per cent.

Q. Now, we will assume that you have got a contract at the figures set down in your appraisal for replacing the buildings and apparatus of the Consolidated Gas Company. Would you employ engineers to lay out the work and draughtsmen to put the same 45531
into proper working drawings and prepare specifications and such?

A. That work will be done by the Gas Company, that is, with the force of engineers and draughtsmen that I have just referred to. They would ask for proposals on specific parts of the contemplated improvements, such as apparatus or alterations to certain fixed buildings.

Q. Now, in asking for these bids I presume that the details, say for gas holders and holder tanks, would be furnished by the firm giving the bid?

45532 Frederick J. Mayer, Cross.

A. They might in some instances if they are approved by the Gas Company. When they have an idea of their own that the details of the manufacturers do not suit them, they would change them to suit their ideas, and get bids upon such altered conditions.

Q. In these bids submitted by Bartlett Hayward, which you are familiar, were the plans and specifications for those holders and tanks drawn up by Bartlett, Hayward & Company, or the Consolidated Gas Co.?

A. In the instance of the tanks of Bartlett, Hay-
45533 ward & Co., they are solely and alone my own construction and details. In instance of other apparatus, very often the Gas Company requires specific details to be incorporated in the construction upon which bids have to be made.

Q. I presume the U. G. L., from whom you obtained your bids for the Lowe water gas apparatus, also have their own plans and specifications, have they not?

A. Absolutely the same as in my instance with the gas holders.

Q. Now, your plans and specifications are prepared for say one stack of benches of a certain size,
45534 I presume those plans and specifications can be used for another stack of the same kind of benches, can they not?

A. They can under like conditions, but where conditions differ, or the details of construction have to be changed to suit that particular condition—

Q. That is, different foundation plans might have to be used or something of that kind, dependent—

A. In the instance of benches they would have to be adapted to the building unless it is contemplated to make such in the buildings to permit of building benches of modern construction.

Q. This contract which you have, being for a great number of buildings and benches, I presume you would endeavor to so make the size of your buildings and benches that the plans for one would be fitted for use elsewhere, would you not?

A. Not at all. Every plan that I design is designed upon different lines to suit the local requirements and conditions as they exist. One cannot be applied to another.

Q. You never make your plans and specifications for say one holder in figuring upon the cost of another? 45536

A. Oh, yes, I said before that we apply it to the requirements of the individual conditions.

Q. That is also true of your benches, is it not?

A. Also true of the benches and other apparatus.

Q. Of every apparatus?

A. Yes, the Gas Company watches the results obtained with the apparatus very carefully, and where they see the necessity of introducing improvements in the next apparatus for the same purpose, they request the manufacturer to incorporate that in his design.

Q. You have assumed a two years' building, what do you mean by that, that the operations from the time you obtained the contract to the completion of 45537 the work is two years?

A. I mean that it is two years from the time that the Gas Company places the first contract for grading and excavating to the time that they are able to make gas in that plant.

Q. And that includes such plans and specifications and work of that kind as would be necessary for the work?

A. It does.

Q. Did I understand you state in your testimony yesterday in reference to foundations of the 21st

Street plant that the concrete foundations for the new Lowe machines were not piled?

A. I did say that, and the reason I presume for not piling this particular foundation was due to the fact that the ground was found to be sufficiently compressed from the piling of the building, and the adjacent foundation of the old benches which had been piled. There is very often a great difference in the character of the ground within a very short space. I find for instance in two purifier houses at the Astoria plant, that within two hundred feet, the same
455,39 kind of building, that in one instance the excavation alone of one building amounted to over $40,000. Whereas in the instance of the other building, an exact duplicate, it was $27,000, and the buildings were only 200 feet apart.

Q. This last is an unusual condition?

A. Not at all; it is met very often.

Q. And in your assumption of the necessity of piling under such buildings as you have included in your appraisal, it was based upon information given to you by the employees of the Consolidated Gas Company or from such old contract that came into your hand?

455,40 A. Well, they were only sufficient to indicate that the buildings had been piled, and then the value of the building was based upon my only detailed estimate of what those pilings would be if I had to construct them.

Q. I mean whether or not it was necessary for these buildings to be placed on piles, not the cost of them?

A. No, it was not any question of finding out whether it was necessary, but whether it was piled, and I found out they were.

Q. That is all you looked into?

A. That is all I looked into.

Q. You stated yesterday there was no visible dilapidation of the 14th Street plant and that it can be operated to full capacity?

A. I did.

Q. In this connection did you notice that one entire stack of benches was let down, and kept down by reason of wear and tear on the retorts?

A. Where is that, 14th Street?

Q. Yes.

A. I don't think that was the fact at the time of my investigation and examination of the plant. 45542

Q. Did you notice Mr. Edgerton's testimony in reference to that?

A. Yes, I believe I recall that.

Q. Did you notice that six or eight benches or another stack were exhausted?

A. Not at the time of my examination.

Q. Did you notice that the stack of sixes accompanying the 1 2 depth furnaces, although nearly filled with retorts, was out of action?

A. I did not notice it.

Q. I ask did you notice it at the time?

A. No.

Q. Were all of these benches in action at the time of your examination? 45543

A. As far as I can recall now they were, although I won't be sure of that because it was some time and it is possible that larger number of benches were down, and I believe they were, for repairs; that is usual in the summer time, to shut down part of the plant to repair it.

Q. The condition would be different in December or January when Mr. Edgerton visited the plant, would it not?

A. It would as far as the repairs were concerned,

but if they had other sources of production to supply the demand, they could afford to shut down a section of the plant.

Q. You stated yesterday that the pipe connections cannot be cut off in an old apparatus in order to connect on new apparatus. Must not, therefore, the new piping be a duplication of the old and on a larger scale, and when the old apparatus is removed what use can these old connections be?

A. I didn't refer to pipe connections for apparatus; I referred to pipe connections for the entire
45545 plant.

Q. Let us refer to pipe connections for apparatus.

Mr. Mathewson: I do not think Mr. Mayer so testified. I asked in regard to yard connections and nothing about—

Q. Let us take it, say to a purifier box. Now, you have stated that such could not be shut down because the operation of the works must go on, and we will assume putting in a new purifier box and say you carried to that purifier box a new connection.

A. I didn't state that at all. I stated that the connections could not be taken out and replaced by others because it would stop the operation of the
45546 plant.

Q. Well, I think I stated the same thing in a little different way.

A. No, you referred to a single apparatus of the plant.

Q. Let us assume the single apparatus of the plant.

A. That is a different question from what I answered yesterday.

Q. Maybe it is; let us assume that it is. Will you answer the one I am asking now?

A. The question you ask now does refer to a single apparatus. If you mean to refer say temporarily

45547

to a single apparatus, to reconstruct the same, that of course can be done without shutting down the plant, because there are always valves between the gas mains and apparatus permitting a shutting down of such individual apparatus, but that is an entirely different question from what I answered yesterday.

Q. So in the instance I have mentioned it would be possible to remove the yard connections and replace it by another?

A. No, it would not, I have not referred to general connections. I have referred to an apparatus, the elimination of this particular apparatus and not 45548
particularly to any pipe connections except so far as they belong to that particular apparatus.

Q. Well, that is what I have reference to.

A. That is not yard connections.

Q. Well, take the yard connection running to that individual apparatus.

A. Well, you cannot take out the yard connections without stopping the operation of the plant.

Q. If, Mr. Mayer, you had been unable to obtain figures from the U. G. I. as to the cost of their water gas apparatus, how would you figure the value of such apparatus?

A. I should have had to figure them in detail, both 45549
for the fire brick linings as well as for the shells and mechanism to operate the plant, but as I have built many shells and a great many operating mechanisms for various kinds of water gas apparatus, including those of Mr. Edgerton's, I am familiar with the cost of that class of works from my own experience.

Q. I presume that the forms of these water gas apparatus, in fact of all apparatus in gas works, have been changed several times during your experience as an engineer?

45550 Frederick J. Mayer, Cross.

A. Oh, yes, I have stated that just a few minutes ago, that the details have been changed.

Q. I presume also in estimating your value of guide framing, or rather the weight thereof, that the size and weight of a holder has much to do therewith?

A. No, none whatever. The size and weight of a holder has nothing whatever to do with the guide frame.

Q. So that a holder of small cross section would require as heavy a guide framing as one of large cross section?

45551 A. That depends upon the result of statistical calculation, based upon the assumption of twenty-six pounds of pressure to the square foot of curved surface exposed to the direction of the wind.

Q. So that then a large holder which has relatively a large cross section would need a stiffer and heavier frame than a small one, would it not?

A. Oh, yes, that is natural.

Q. And a three or five—

A. Excuse me. What I meant by that, is not stiffer applied in the proper term of the word. It has to be just as stiff for a small as a big holder, but it would require more material in one than in the other.

45552 The stiffness would have to be the same in both to resist the same wind pressure.

Q. And to get that stiffness in that large holder you would have to have more weight than in a small holder?

A. Yes, more material.

Q. Well, more material means more weight?

A. Yes.

Q. That is also true for a five lift holder as with a one lift holder?

A. Oh, yes. Possibly I misunderstood your question before regarding the size and weight of a holder

45553

in comparison to the guide frame. I referred to the same individual holder, meaning the size and weight of a particular holder had no fixed relationship to the weight of its own guide frame.

Q. That comes down to that with which we all agree, that cubical contents has little influence upon the weight of the guide frame; it depends upon the diameter of the holder?

A. That's right.

Q. You spoke yesterday of your detailed estimate of cost of the governor and boiler house at 132nd Street?

45554

A. Yes, sir.

Q. And you gave a cost of that per cubic foot, did you not?

A. I believe I did.

Q. Do you remember what that was?

A. I think it was fifteen cents, wasn't it? I don't remember.

Mr. Mathewson: 13.2 I think.

The Witness: I think it was fifteen cents, that is my recollection. That was 132nd Street, wasn't it?

Mr. Mathewson: Yes.

The Witness: Fifteen cents.

45555

Q. Is that the building which you compared with Mr. Edgerton's cost?

A. I did.

Q. That being the only exhibit which I had I will take that up. I refer you to Complainant's Exhibit 373, which purports to be a comparison between your valuation of that plant and Mr. Edgerton's, and I ask first of all where do you get the value of $30,000 as Mr. Edgerton's valuation, cost given in schedule, because by referring to the testimony I see that the value set down is $21,000.

Mr. Mathewson: Mr. Edgerton computed that at $21,160, and I am not sure but that may have been one of the clerical errors in the schedule that Mr. Edgerton presented, which was subsequently corrected on your list here—$30,000, I mean.

Mr. Kirby: In my copy of the schedule, I have not the original, and in the printed schedule which was taken from the original, the value is set down not at $30,000, but as over $21,000, or $21,160.

45557 Mr. Mathewson: $21,000 it was put down as —was that the depreciation value or original value, Mr. Kirby?

Mr. Kirby: I don't know.

Mr. Mathewson: There are $30,000 and whether that was an error and subsequently changed before printing—or maybe it was the cost without depreciation, I don't remember.

The Witness: I think it was Dr. Marks' testimony instead of Mr. Edgerton's.

Q. Then it is an error, instead of having $30,000 it ought to be as in the testimony, $21,000?

A. It appears here $21,000. It may be I just 45558 changed the two schedules, Dr. Marks' and Mr. Edgerton's.

Q. Well, that is the case; you have just referred to the schedule where you got your information from?

A. Yes.

Q. And it is set down there as $21,000?

A. Yes; it should be Dr. Marks' valuation instead of Mr. Edgerton's.

Mr. Mathewson: In reference to that 132nd Street building, the 13.2 cents is the amount at which Dr. Marks figured Mr. Mayer's cost upon Mr. Marks' cubic contents, 13.2.

45559

Mr. Kirby: What I was after was Mr. Mayer's and that is fifteen cents.

The Witness: Fifteen cents.

Mr. Mathewson: Mr. Mayer, on his own cubical contents computation gave fifteen cents.

Q. So that the figures which we have to compare are Mr. Edgerton's $21,000, and—

A. $21,160, as given in his detailed schedule.

Q. And your figure which is—

A. $26,763.

Q. What is this figure which I see here, $20,071? The figure in Complainant's Exhibit 373?

45560

The Master: It says here total contents of building 133,800 cubic feet.

Mr. Kirby: I just wanted to see what the value is and I think I know, but I want him to state.

A. It may be an error of the typewriter in inserting those two values. I do not recall for what reason they put that down. I don't know whether it had any relation to the fifteen cents at all. The total contents of the building was 133,800 cubic feet.

Q. Well, 133,800 cubic feet at fifteen cents per cubic foot would be what?

A. I presume $26,736.

45561

Mr. Mathewson: You had better not presume. Just figure it out and see. That may give you some light. You had better look at your own record and find what the cubical feet are and not depend upon memory.

A. Well, I have it down here, 133,800.

Mr. Mathewson: Yes, but the question is raised about it. That is the building at the top of the page, isn't it?

A. Will you let me see my original schedule, please, of 132nd Street?

Mr. Mathewson: You have it here.

By Mr. Kirby:

Q. It is a fact that the number of cubic feet which you have set down on this exhibit as the cubical contents of that building, figured at 15 cents per cubic foot, amounts to $20,071, is it not?

A. $20,071, yes.

Mr. Mathewson: Look at your cubical feet. Look at your memorandum and see if that is right.

A. That $20,071 refers to the building alone. And
43563 then there is an item for the foundations, $6,665, making a total of $26,736.

Q. Then, that is the cost you have given in your schedule, but you have figured this out now at 15 cents per cubic foot and you have given the cubical contents of the building?

A. Yes, I have already stated in my testimony that my additional values per cubic foot are based upon a foundation of about four feet depth below the surface of the ground; it includes though in that instance a good character of ground, which at fifteen cents for the building making $20,071, and then there is an item for foundations, extra cost $6,665, making a total of
43564 $26,736.

By Mr. Mathewson:

Q. That is what appears in your original schedule?

A. That is on account of the original increased depth for foundations beyond that of normal condition.

By Mr. Kirby:

Q. So you have tried to carry through the estimate of all your buildings a method which will make them capable of comparison you have taken a certain unit assuming a certain depth of foundation and where that foundation has been carried deeper you have

added to that and where it has been shallow you have deducted?

A. That's right.

Q. Now, then we are to compare Mr. Edgerton's valuation of $21,160 with your valuation of $26,736, is that correct?

A. That is right, sir.

Q. And is this figure of $19,310 which you have put under Mr. Edgerton's column that of his building exclusive of foundations so as to compare it with your figure of $20,071 exclusive of foundation?

A. Exclusive of the foundation as it exists here but 45566
including foundation in the depth of four feet as would be in normal condition, so that the two valuations are upon the same basis.

Q. So that there is practically but little difference between the two?

A. As far as the substructure is concerned, but he made a big blunder in his foundations.

Q. Endeavoring to trace this blunder, as you call it, you have taken certain values and put them under the column headed "Edgerton's values"; where did you get those values from?

A. From his total estimate.

Q. Did they come from the testimony? 45567

A. No, from his detailed estimate which he submitted here in large yellow paper envelopes.

Q. Now, I notice that on page 3 of this exhibit, under miscellaneous items, you have fireproof concrete arches. Now, you included that in your cost of concrete?

A. Yes.

Q. And so in your tile coping, you included the cost of enameled brick and so on?

A. Yes.

Q. So that it has been impossible for you to make

separate comparison between the values which you put upon certain parts of the work and values which you, looking at these sheets to which you have made reference, assumed Mr. Edgerton had put upon the same parts of the work, is that not a fact?

A. No. In most instances direct comparison was possible; and only in these few instances, such as fireproof, concrete arches, tile coping, fireproof doors, flashing and gutters and machinery foundations, amounting to a total of $3,450, no comparison was possible.

45569 Q. Did you go through these sketches which Mr. Edgerton submitted here?

A. Oh, no, that was impossible.

Q. Do you understand those that you went through?

A. Do I understand them?

Q. Yes?

A. Well, I did as far as I could tell what figures meant when I saw them on a piece of paper added together. That is all it amounted to.

Q. What were these schedules, were they detailed statements of cost?

A. Well, they were intended to be, and with the exception of the omissions, why they were detailed statements. There were a whole lot of omissions.

45570 Q. You haven't any knowledge, have you, as to whether or not certain amounts as set down for a certain material or job say painting and glass, Edgerton's value $325 as against yours, being $150, you did not include hardware which you have set down as a separate item of $200?

A. If he includes painting and glass under hardware it would be a blunder right off. I don't see any connection between the two.

Q. It might be a blunder in the statement but it

would give the same thing in dollars and cents, would it not?

A. I am not prepared to say.

Q. Neither are you prepared to say that the amount which he sets down as $520 for granolithic cement floor which you give as $432 does not include other things besides the floor itself?

A. I cannot tell; no, sir.

Mr. Mathewson: Might that include hardware, too?

Mr. Kirby: It might very well include it.

Q. In figuring out the costs of buildings and things 45572
of this kind, do two men work in the same way? Is it not a fact that one man will oftentimes include under a certain head what another man will include under another certain heading?

A. No; that couldn't happen very easily. He might apply different valuations but so far as the application of values to a certain class of material or workmanship is concerned he could not change those. He could not make carpenter's work like hardware or hardware like painting and glass or anything of that kind. He can apply different values but cannot change the character of the work to which it is applied.

Q. Now, in going through these schedules you 45573
found a certain statement with the letters "etc." after them. Did you know what those letters "etc." referred to?

A. What are those letters?

Q. Well, it means and so forth, does it not?

A. I presume so.

Q. Do you know what and so forth means?

Mr. Mathewson: Let us see what it is that you are referring to.

Mr. Kirby: My question is perfectly clear.

A. No, I don't know what and so forth means in putting a valuation on the cost of a building. I couldn't attach any value to it.

Q. So wherever in this schedule which you have just made reference to I show you "etc." do you know what the "etc." means?

A. I don't know. It is of no value.

Q. And probably the only man who would know what "etc." meant would be the man who put it there?

A. That may be so, but when you total up his summary and you find that a whole lot is missing there then that "etc." explains that "etc." was not taken care of. It was lost in some way or other.

Q. As a matter of fact that "etc." might very well be those things which have not been taken care of?

A. Well, that may be, but when they are not there, of course his price is too low.

Q. And in such cases where his prices are smaller or higher than yours I suppose "etc." included certain things there which he had not taken care of?

A. Possibly.

Q. So in no instance, high or low, or the same, could he be right?

A. No, the total is considerably lower. If the total was the same as mine it would be all right, but it is not.

Q. So the way you come to your conclusion is to take Mr. Edgerton's total and compare it with yours and because he is different he is wrong, is that it?

A. I know he is wrong because he has not allowed sufficient for sub-construction or foundation. It is self-evident by his detailed estimate that he has not included it.

By Mr. Mathewson:

Q. You would not include $6,000 of extra foundations under "etc." would you?

A. I think not, unless figured it in detail.

By Mr. Kirby:

Q. This question of foundations having been such an interesting one—I cannot find it here, but if I remember rightly you made reference to Mr. Edgerton's lack of including foundations in his appraisal of the 21st Street station. Did you make such a reference?

A. That may have been possible, I don't recall it exactly, but I believe it is quite likely.

Q. Now, do you find on Mr. Edgerton's valuations for these buildings to which I have called your attention that he has made any allowance for both foundations or any foundation except the foundation which could be used in the hard soil? 45578

A. He did not. In some instances he did not allow enough for ordinary foundations.

Mr. Mathewson: That was the old and new generator house at 21st Street, was it?

Mr. Kirby: I think that referred to the whole of 21st Street.

Mr. Mathewson: No, I don't think so, for I didn't ask him as to any buildings at 21st Street except the old and new generator plant, as far as I recall.

Mr. Kirby: He went into a whole lot of talk about purifier houses and sheds. 45579

Mr. Mathewson: The question asked was whether these buildings, with reference to these buildings, that is to say the two buildings respecting which I had been questioning the witness, and he said he found he had allowed only 621 cubic yards of excavation. There should have been over ten times as much or 6,740.

Mr. Burr: I find referring to certain buildings that Mr. Edgerton has made no allowance for pile foundations.

Mr. Mathewson: Yes, that is quite right.

Mr. Burr: Under the water gas apparatus and under the buildings.

Mr. Mathewson: That may be, yes.

Mr. Burr: And the witness stated he had drawings on such foundations and from such drawings and the information which was given him he built what would represent the existing foundations.

Mr. Mathewson: Yes. That is all true. Confining this to apparatus and foundations and
45581 buildings to which the witness was testifying. It may be Mr. Edgerton did not allow anything for pile foundations on any building at 21st Street, and this witness might so testify if it were true, but my point is, so far as I recollect he has not covered it so broadly as that.

Mr. Kirby: The contrary may not only be true, but is true.

Mr. Mathewson: Even if so it must appear in the statement.

By Mr. Kirby:

Q. Well, so that we may get at the foundation of this whole foundation question, let us take up the
45582 21st Street station and buildings. Let us take the first building set down in that schedule, stove storage and meter proving shop. I ask you if you know—

Mr. Mathewson: Refer to your schedule in reference to the 21st Street plant, so you can know what you are after.

Q. (continuing:) —how much Mr. Edgerton allowed for the excavation and foundation upon this building?

A. No, I do not.

Q. Now, I ask if you will tell me how much you

allowed for excavation and foundation in that building?

A. $12,400.

Q. And did that include foundation for machinery?

A. There is not any machinery in that building.

Q. So that a statement in that schedule "foundation for machinery" is an incorrect one?

Mr. Mathewson: No, it is not.

A. I have it here as merely a memorandum, instructions given to my men at the time of examining the plant to look out for foundations of machinery, and they had a memorandum by which they had to report to me. Where there isn't any machinery, there wasn't any included. 45584

Mr. Mathewson: This was Mr. Mayer's private memorandum made out for his purpose, and to assist you I had copies made as speedily as possible and sent to you. There were in various cases expressions, "Foundations for Machinery," under different headings which were merely put there by Mr. Mayer's instructions to call the attention of himself and subordinates to look for foundations and include them if there were any, and it does not mean that any foundations were included in the total estimate. Is that so, Mr. Mayer? 45585

The Witness: That is so; it was simply copied in making the copies of the schedule.

Q. Taking the meter repair shop and office, do you know how much Mr. Edgerton included for foundations in that building?

A. I don't recall it now. I looked hurriedly over his detailed estimate, but I cannot carry it all in my head.

Q. Nor for the stove repair shop?

A. Same thing.

45586 Frederick J. Mayer, Cross.

Q. Or the—

A. There is no foundation for machinery in any of these buildings.

Q. And none included in your estimates of their value, is there?

A. None whatever.

Q. Do you know how much Mr. Edgerton allowed for his foundation for machinery over the entire plant?

A. No, he did not figure the foundation separate from his substructures and therefore you cannot tell.

45587 Q. In other words you could not from the sheets which you had before you separate the figures so you would be able to come to a conclusion thereon?

A. There were some instances where I think there was a figure at the end for these foundations estimated in round figure, in a great many instances there was no such figure.

Q. In those instances you were not able to make your separation?

A. No, because he did not figure it in detail.

Q. Do you deny that these sheets were the only figures that Mr. Edgerton had in making his appraisal?

45588 A. That is the only one submitted to me.

Q. Well, I didn't ask you that.

A. Well, those are the only papers I can base my judgment upon, I haven't seen any others.

Q. In making your estimate did you have about three sheets or a sheet and a half for each building?

A. Whenever I made a detailed estimate it was made on the same basis that you have an example of before you. Foundations I kept separate from the buildings in order to establish a value of foundations.

Q. And the figures and calculations that you made to come to these conclusions I presume would cover a great many more pages than even here, would it?

45589

A. No, it was not necessary for me because I employed a unit figure for the buildings which included a certain amount of foundation. All I had to estimate was the variations from normal conditions of the construction under consideration and so I got basis for comparison.

Q. So that that would be a very simple operation?

A. It would be, yes.

Q. Quite a different operation, however, where you are working on the cost of buildings by detailed estimate of materials entering into the construction thereof?

45590

A. No, it would not be very different for the reason as shown in my yesterday values in which the detailed estimates or rather the prices of the detailed estimate were included.

Q. In your unit values you had to go through quite a long process to come to a conclusion, did you not?

A. No, I had those.

Q. But at the time you originally made that you had to, didn't you?

A. Yes, indeed.

Q. You didn't do it on one sheet of paper, either?

A. No. It took more than three or four weeks to do it, too.

45591

Q. Now, if I remember your testimony yesterday you stated Mr. Edgerton figured his brick at $14 per thousand laid?

A. I believe that was the case in that instance, that particular building. I have forgotten which one it was. I think it was at 132nd Street, the governor house—

Mr. Mathewson: No exhauster house at 111th Street. They may have miscopied it 111th Street, but my notes make it so.

45592

Q. I think you stated that Mr. Edgerton's price for flooring was $40, a thousand, board measure.

A. Yes.

Q. Now, I call your attention to pages 5393 and 5394 of the testimony, and ask you if it is not stated there that Mr. Edgerton in making his estimates considered the cost of material erected "brick work, ordinary brick, $14 to $20 per thousand; pressed brick $20 to $40 per thousand; lumber $35 to $60 per thousand feet B. M."?

A. Yes, but I am referring to the detailed prices

45593 applied to his estimate in yesterday's testimony—applying his prices given in his testimony in the detailed estimate, but much lower ones.

Q. Will you tell me in how many instances he used brick at $14 per thousand laid?

A. No, I can't tell you that because I could not examine all the estimates within the time.

Q. Can you tell me in how many instances he used flooring at $40 per thousand feet, board measure?

A. No.

Q. And you assumed that because he used it in one instance that he used it in all instances, is that right?

45594 A. Well, I had a good reason for that assumption. I don't see why he should change the value in one building from that in another building for the same class of materials unless there is an error.

Q. And the cost of brick laid never varies, in your mind?

A. Oh, yes. I stated that repeatedly. It varies very much.

Q. You gave a value yesterday, I think, of $25 per thousand, did you?

A. And I gave in detail how that was made up in my testimony.

45595

Q. When did you give that?

A. In my original testimony.

Q. I would like to have you give it to me now?

A. These prices are based upon conditions that existed at the time of my examination last summer. The average price of the brick was $10, the minimum price at that time was $8, and the maximum price was $12. The labor of laying that brick for bricklayers was $7, the labor of the helpers was $4, the Portland cement was $2.25; sand and water, 80 cents; proportion of time for foreman, 50 cents; proportion of time for timekeeper, 20 cents; hod hoisting, 50 cents; 45596
scaffolding, 16 cents; total, $25.41, for which I applied a figure of $25.

At 1:10 P. M. a recess was declared until 2:30 P. M.

Afternoon session.

2:30 o'clock.

FREDERICK J. MAYER, being further examined, testified as follows: 45597

CROSS-EXAMINATION CONTINUED BY MR. KIRBY:

Q. Just before recess you gave us figures going to make up the cost of brick, which you stated you have used, as $25 per thousand laid, and you gave brick at from $8 to $10?

A. $8 to $12.

Q. Using an average figure of $10 per thousand?

A. That is right.

Q. Was that the price of brick in December of last year?

A. That was the price of brick in July of last year, at the time I made my examination.

Q. Is it not a fact that the price of brick in December last year and today is no higher than $7.50 per thousand, for ordinary brick, used in ordinary building purposes?

A. That is always the case in the winter time, when they cannot get up the river in the winter, and they cannot make any deliveries.

45300 Q. I suppose that it is the effort of every builder to purchase his brick at as low a figure possible?

A. Yes, but he has got to buy them when he can get them.

Q. You stated that a bricklayer received $7.00 per thousand? Upon what day's wage did you base that?

A. $5.60 of eight hours.

Q. That would be the same as the wages used by Mr. Edgerton; that is, 70 cents per hour, would it not?

A. Seventy cents per hour.

Q. How many bricks do you calculate he would lay in a day?

45400 A. 800 brick in walls of this kind.

Q. Is it not a fact that bricklayers laying brick on straight work of this kind will lay a thousand a day, and oftentimes more?

A. Not when the work is executed under the direction and supervision of the Consolidated Gas Company.

Q. In ordinary contract work such as is going on in this city, is it not a fact that men will lay a thousand and more bricks a day?

A. It depends on the character of the wall.

Q. I mean in this character of wall?

A. No, it is not. A wall that contains pilasters and curbing cannot have much over 800 brick laid in a day, when you lay it in cement mortar, in a full bed of mortar.

Q. Are all the brick of the Consolidated Gas Company laid in cement?

A. Almost all, there are very few exceptions.

Q. Is there no lime used?

A. Occasionally, but not often.

Q. Is there any way the brick is laid in most work in this city?

A. In most gas works? 45602

Mr. Mathewson: Are we dealing with the Consolidated Gas Company's plant? It seems to me we are, and not with some other plant.

Mr. Kirby: They may have laid the brick in cement when there was no necessity for it. There was a great deal of extravagant work done here.

Mr. Mathewson: This is testimony by Mr Kirby.

Q. Is it not a fact that brick laid in buildings of this character in this city are laid with lime cement, instead of cement mortar?

A. No, it is a fact that they are almost exclusively laid in cement mortar, and not lime mortar. 45603

Q. And you consider that the walls of the building of the Consolidated Gas Company are laid in cement mortar?

A. I do.

Q. Is that true of the buildings at 21st Street?

A. I do not recall exactly whether this is true in any particular instance, but if these buildings were to be built today, they would be built in cement mortar.

Q. I see you put down here the price of a helper at $3.00 a thousand. What wage does he receive per day?

A. $3.00.

Q. For an eight hour day?

A. An eight hour day, yes.

Q. Is it not a fact where hod hoisting machinery is used, the helper is able to serve more bricklayers, than where hod hoisting machinery is not used?

A. In buildings of this kind, where the heights are not very great, and hod hoisting does not cut a very great figure.

Q. Fifty cents on a thousand brick?

A. I mean the application of machinery would not,
45605 because the buildings are comparatively low.

Q. Do you use hod hoisting machinery as a matter of fact?

A. To a very small extent in buildings of this kind.

Q. I notice you have a foreman down here at 50 cents?

A. Yes.

Q. What do you figure his wage to be?

A. $7.00 per day.

Q. How many workmen do you expect that foreman will be able to take supervision of?

A. Any foreman is required to supervise from
45606 twelve to sixteen masons. That was taken from direct observation last summer during the construction of the buildings at the Astoria plant, from where I collected all this data. I also ascertained that they could only lay 800 bricks a day.

Q. You do not consider that the bricklayers at Astoria are laying more than 800 bricks a day, in work of this kind?

A. They were not, at the time of my examination.

Q. Is it your understanding that the sub-contractors that are laying brick at Astoria are receiving as much as $25.00 a thousand for brick laying?

A. If they do not they lose money.

Q. Then if it came to your attention that the builders that are erecting the Blair Building, which is at the corner of Broad Street and Exchange Place, and the builders that are putting up the North American Trust Company Building and the builders that erected the Title Guarantee & Trust Company Building on Broadway, each of which is by a different concern, are today using in their estimates and prices for brick laying $15 to $20 a thousand, they would be losing money?

A. I know nothing about that class of buildings. 45608
I am talking about buildings that I have erected in my own experience, and as to which I have absolute facts.

Mr. Mathewson: Gas house buildings?

The Witness: Gas house buildings.

Q. Have you ever built gas houses in the City of New York?

A. I said in my testimony that my valuation was based upon the buildings of the completed plant of the Kings County Gas Light Company in Brooklyn.

Q. Are you prepared to state that the buildings of the kind that I have spoken of are more complicated in their character or that the laying of brick thereat 45609
would be more expensive than at a gas house building of the same kind and character as the Consolidated Gas Company?

A. I would not be able to make any comparison at all; they are so different in detail of construction that they cannot be compared.

Q. When was the Kings County Gas Company building put up?

A. I have testified to that.

Mr. Mathewson: He went all over that in his original examination fully.

45610 Frederick J. Mayer, Cross.

The Witness: 1897.

Q. You have also taken occasion to state your figures in reference to the price of lumber; are you aware that you can purchase today lumber of as good quality as that which is used in the majority of floorings of the buildings of the Consolidated Gas Company for a price not higher than $30 per thousand board feet?

A. No, the price that I have obtained within the last few days was $45, and the price that I applied last summer I think was $42.

Q. Did you make application to the Southern
45611 Yellow Pine Company?

A. No, I did not.

Q. Did you make application to the Collins-Lavery Company?

A. No, I did not.

Q. I understood you to say that you did not make a careful examination of all these sheets, which are placed in the possession of counsel for complainant?

A. No, it was impossible in the time.

Q. I call your attention to sheet for the 65th Street station, where there appear under the heading "Brick Work" certain dimensions, and I ask you if it is set down thereon at that price this brick work was fig-
45612 ured?

A. That might be $17 or $18.

Q. If you multiply that by $18 you will get $3,600, will you not? And if you multiply by $17, you will get some other figure?

A. I presume so.

Mr. Mathewson: That would be a little less wrong than $14?

Mr. Kirby: As you look at it.

Q. Here is one of the buildings of the 21st Street plant, brick work, giving certain dimensions, $17?

A. Yes.

45613

Q. That is correct, is it not?

A. Yes; that is, the application of the figure 17 is correct on that sheet. I do not know whether the calculation is correct.

Mr. Mathewson: Are the sheets the same as those which were in the envelope when we had them?

Mr. Kirby: They are the same sheets.

Q. In such of these sheets as you did examine, did you notice that in some instances the value of the building as given in Mr. Edgerton's schedule differed from that set down upon the sheet?

45614

A. I cannot recall that now.

Q. Did you notice that in some instance the total of the amount set down as the cost of the various elements of the buildings is not the same as the cost of the entire building as set down on the sheet?

A. That is about the same question; I cannot recall that in detail. There was too much stuff to examine in the time that I had.

Q. Did you notice that in some instances the walls were figured solid?

A. That is, without any allowances for windows equal to the cost of the brick work which is replaced?

45615

Q. But in figuring the cost of the wall as such, did you notice that in some instances the wall was figured solid, without any brick being taken therefrom such as would be measured by the area of the window spaces?

A. No, when I examined the detail of the brick work, I believe I saw there was an allowance for the cost of the windows equal to the displacement of the brick.

Q. If the walls had been figured solid in the manner which I indicated, would not this increase the cost

per thousand of brick which would have to be actually laid for that wall with the window spaces taken out?

A. No, because they are figured at the same cost. The windows are figured at the same cost as the brick work; consequently there is no difference.

Q. You misunderstood me. We will take a wall for instance in which—

Mr. Mathewson: If you exclude windows and put in brick, or if you exclude the brick and put in windows, the witness says that they offset each other.

45617 The Witness: According to your own detail.

Q. Let us assume that we have a wall indicated on this blotting paper, and in it, there are say a dozen windows or doors or what not; now, let us say that we are figuring only on the cost of that wall, and we take its area solid without any allowance for any windows or doors, or anything?

A. Without any allowance for pilasters, or anything of that kind?

Q. We will make an allowance for anything that is there, with the exception of the windows and doors; if we take and multiply the number of brick as calculated in that way by, say, 16, we will come to a cer-

45618 tain figure which would be the cost of that solid?

A. On that basis of applying a price?

Q. Applying a price, yes. Now, if instead of doing it that way we deduct from the number of brick the number which would be indicated by the area of our windows and doors, we would for the same value have to use a higher amount per thousand, would we not?

A. If $17 was the figure and what you took out for the windows is replaced by brick work I do not see why we should; it will be one and the same thing for the cost of the wall; therefore the total cost of the wall remains the same.

45619

Q. The total cost of the wall remains the same, but the total cost of the brick per thousand is different, is it not?

A. The total number of brick would be different.

Q. Yes, and if you figured your brick at the larger number than were actually there, and come to a figure which we will say would be $1,000, and you used that $1,000 as the value of your wall, and then divide that by the number of brick actually in that wall, you would get a cost per thousand which would be greater than that which you would use, would it not?

45620

A. Than that which I use?

Q. Than that which would be used, under such conditions, in your calculation?

A. Than that which I use, yes.

Q. You stated in your testimony yesterday that you made a detailed estimate of one of the sheds at the 21st Street plant?

A. Foundations, I think I said.

Q. Page 6574, the things of which you have prepared a detailed estimate; there you check your figures as to Shed No. 2, 21st Street.

"Q. And that would give a total of detailed estimate of how much for the shed?

45621

"A. 867,846."

A. I think that detailed estimate referred to the foundation.

Q. Have you prepared a detailed estimate of any building at the 21st Street station?

A. For the foundations.

Q. Not for any buildings?

A. Except Avenue A shop, I think it is 21st Street, which was omitted from my original testimony.

Q. Then you figured all of these sheds at so much per cubic foot; is that right?

A. For the superstructure; yes.

Q. And that was 16 cents a cubic foot, was it not?

A. That included the purifier houses, and houses with double floors, yes.

Q. Did those double floors extend all over the floor?

A. They did in the substance of the revivifying room, but not in the instance of the purifier houses.

Q. How high are those buildings?

Mr. Mathewson: Which one are you referring to now?

Mr. Kirby: I am referring to the one in the
45623 testimony at page 6,547, No. 2 shed at 21st Street, the one of which he said he prepared a detailed estimate, and which he now says only referred to foundations.

Mr. Mathewson: That was the total detailed estimate.

Mr. Kirby: $67,840.

A. The average height was 28 feet 6 inches; some of those were higher than others, but that was the average height for all six.

Q. And you used the 16 cents per cubic foot factor for each shed?

A. I did.

45624 Q. How many of them were there?

A. Five sheds, two purifier houses and one condenser house; all of the same dimensions.

Q. Were they separate buildings?

A. They were all in connection with each other, all adjoining each other.

Q. They had party walls, hadn't they?

A. Yes, with buttresses on both sides.

Q. Didn't you figure them as separate buildings?

A. No, my valuation of 16 cents per cubic foot that took care of all that.

45625

Q. In other words, it would be more if each building had its own wall?

A. If it had been one separate building, yes.

Q. How much would it have been in that instance?

A. I could not say offhand; it requires that I should give it some little consideration, to establish a unit value of the building, because you would have to do it in comparison with other buildings.

Q. Would it have been a cent more?

A. I could not tell that offhand; I would have to make a detailed comparison.

Q. What is the construction of those buildings? 45626

A. They are heavy walls, buttressed on both sides, with foundation walls 24 inches thick, and some of them have very expensive peaked roofs, and some of them have flat roofs.

Q. What do you mean by very expensive roofs?

A. For that size of building, the peaked roof as compared with a flat roof; the flat roof is very much cheaper than a peaked roof.

Q. Are there any stories in them, floors?

A. I have already stated, in the oxide shed and the purifier house.

Q. But they do not cover the entire area?

A. No, but they all refer to the same valuation of 45627
16 cents per cubic foot; 16 cents remains the unit for all of those buildings.

Q. Will you take those buildings and compare them with the building at the 132nd Street station, of which you have given a cubical contents factor of 15 cents, and tell me what in those sheds makes them more expensive than at the 132nd Street building.

A. The 132nd Street is figured at 15 cents for the building, and these buildings were figured at 16 cents.

Q. It would have been more but for the party walls?

A. It would have been more but for the party walls, on account of the buttresses and heavy walls and the stonework and the foundations.

Q. How deep are those foundations at the 21st Street station?

A. They are 8 feet 6 inches to the top of the timber capping on top of the piles.

Q. In your 16 cent estimate did you include piling in the foundations?

A. No, I included a foundation to the ordinary depth of 4 feet below the ground.

45629 Q. So that as far as the foundation is concerned, you compared it with the 132nd Street building, did you not, where you add $6,665 for additional foundation?

A. Yes, that was for the extra depth below the ordinary.

Q. And you have done the same thing with the 21st Street station?

A. Much more, because they are piled; considerably more.

Q. So that we can disregard that extra foundation. Now, disregarding that, tell me what in the building at 21st Street is such as to make your unit of value

45630 higher than it is at the 132nd Street building?

A. The brickwork itself with the curbing, and the heavy offsets, the buttresses and the stonework on the buttresses.

Q. How many more brick are there in the walls of the 21st Street station building, considering the wall as a party wall, than there are in the 132nd Street building?

A. You cannot make any comparison on that basis between the two buildings, at all; I could not answer that question, because my valuation was based upon so much per unit of cubical contents.

Q. But that unit varies, and varies according to the kind of buildings; you have stated that the reason is on account of the extra thickness in the wall. Now, I ask you if you can give me the difference in the number of brick?

A. Not in the number of brick, I cannot, only in that unit of value.

Q. As a matter of fact does not the 132nd Street building have more brick than the 21st Street building, considering the wall as a party wall?

A. I could not tell you, because I have not made that detailed calculation on that basis. It is on the 45632
basis of cubical contents.

Q. In the 132nd Street building, you included a steel floor at a value of $2,104.99. Was there any steel floor in this building at 21st Street?

A. No, there is not.

Q. You also included some monitor sash, $630, was there monitor sash in this building?

A. No, there is not.

Q. You also included some terra cotta roof covering, $1,170? Is there any terra cotta roof covering at 21st Street?

A. No, there is stone covering, though.

Q. You also add as high as a value for slating 45633
and flashing as $2,250. Would there have been such an amount as this spent for similar materials at 21st Street?

A. Yes, the flashing would cost more; because it is a much larger roof.

Q. How about slating?

A. No slating, because there are different kinds of roofs.

Q. You also have fireproof concrete arches at the 132nd Street building; are there any fireproofed concrete arches at 21st Street?

45634 A. No; it is substituted by brick instead of concrete.

Q. What are the arches for at 21st Street?

A. I was just going to say—some of these buildings contain foundations for apparatus, especially for purifiers.

Q. But that foundation you considered in the shed for purifier house, didn't you?

A. Yes, but it has for a total valuation, a 10 cent unit for all of it.

Q. Is that quite a large item?

A. Yes, quite an item.

45635 Q. How much?

A. On the total cost of the foundation, you mean?

Q. Yes.

A. I cannot separate the number of feet of concrete in each one of them now.

Q. It is not very large, is it?

A. It is quite an item, yes, sir.

Q. How much do those purifiers weigh? What do the foundations have to carry per square foot?

Mr. Mathewson: You have the weight of the purifiers, haven't you?

The Witness: Ordinarily about three and a half tons.

45636 Q. Per square foot?

A. Per square foot; that includes the spent oxide in the boxes.

Q. What sized purifiers would that be for?

A. The weight per unit of surface would vary of course with the depth of the box. The spent oxide alone weighs 75 pounds per cubic foot, to which would have to be added the concentrated load of the carriages, and the covers suspended from the carriages, and under those conditions the load on the foundations increases very materially more than if the covers are not suspended; therefore, when the traveling load is added, it comes to about 3 1/2 tons per square foot.

Q. Do I understand that over the entire area covered by these purifier boxes there is a weight of three tons or more per square foot?

A. No, upon the foundation.

Q. Upon each foot of foundation there is a load of between three and four tons?

A. Yes, the foundations for the purifiers, that is the foundation for the columns.

Q. That would mean the total weight of the purifier boxes would be how much?

A. This includes the weight of the oxide, and it includes the rolling weight of the covers when sus- 45638
pended from the carriages.

Q. In other words, you are putting down a foundation to suspend a moving load?

A. Yes, a maximum load; that is, normal load plus the moving load when the covers are suspended.

Q. In doing that of course you calculate the area of foundation which is not directly under the load which is moved to that place, don't you?

A. I do not understand that question.

Q. Let us take two tons per square foot of area, what height of solid iron would that represent placed over that area?

A. These are all concentrated loads; the purifiers 45639
are supported on columns, and upon these columns loads are concentrated. It depends on the number of columns, how much the concentrated load will be. The less columns you have, the more load, and the more columns, you have, the less load. I know from my own practical experience, and I have calculated many foundations for purifiers, and I know that they average from two to three tons on those foundations

Q. Exclusive of oxide?

A. Including the oxide it would be about 3 1 2 tons per square foot.

Q. Then instead of having a large area to sustain your purifier you have columns upon which the weight becomes concentrated?

A. Yes.

Q. That being so, the columns must necessarily be similar in area, would they not?

A. It depends upon the load upon them.

Q. You have assumed a load and stated one?

A. I have stated that the load depends on the number of columns under the purifiers.

45641

Q. Do you know the number of columns under the purifiers here?

A. No; you asked me a general question how much the load under the purifiers was, the load upon their foundation.

Q. I asked you a general question and endeavored to aid you to come to a conclusion so as to tell me what the cost of those foundations was?

A. I have the cost here, but I cannot tell you exclusively of the cost of purifiers; I can't tell you in detail.

Q. I don't want it in detail.

45642

A. Then I cannot give it to you.

Q. You cannot tell me what percentage of the total that would be?

A. Not offhand.

Q. In your 132nd Street detailed estimate, you gave an estimate of platform and stairs, $740.01. Was there any such item in your 21st Street building?

A. There was in the instance of the purifier houses and the revivifying sheds, yes. No, they were not iron; they were wooden stairs. Besides, in those buildings there are elevators for the handling of oxide.

Q. You have given the value of these elevators in the schedule of your apparatus, have you not?

A. I do not recall whether I did in this instance or not; I think it is likely they are included in the cost of the buildings.

Q. The schedule will show. My impression is that they are in the schedule of apparatus. Those sheds were coal sheds, were they not originally?

A. I presume they were originally built for coal sheds, and for general store sh ds.

Q. You have included in your estimate of their value an overhead runway to carry coal, have you 45644
not?

A. Yes, that is also included in that valuation of 16 cents per cubic foot, and the very fact that they were constructed for coal sheds made the walls exceptionally heavy and made the valuation a little more on that account.

Q. Are they old sheds?

A. They are old sheds, but they are almost as good as new.

Q. They were built in 1884 and prior to that, were they not?

A. Yes, about that time.

Q. Have there been any changes in them since that 45645
time, that you know of, besides putting in purifiers and revivifying rooms?

A. No, I do not know of any.

Q. Now, I call your attention to Complainant's Exhibit 372, in which you make certain comparisons in the second column thereof, where you say: "Edgerton's value new." What do you mean by Edgerton's values new?

A. Undepreciated.

Q. As a matter of fact those values in many instances included your own values, did they not?

Mr. Mathewson: That has all been explained Mr. Edgerton in his statement accepted Mr. Mayer's figures in many cases and put down the depreciated value in the last column.

Mr. Kirby: I am quite familiar with Mr. Edgerton's schedule and if you will look at it you will see that while Mr. Edgerton did that he did it in cases where he agreed with Mr. Mayer's valuation, or because he did not have time to make appraisal on his own account.

Mr. Mathewson: All right; he assumed them, and we are proceeding on that same assumption in your computation.

45647

Mr. Kirby: That is what I want Mr. Mayer to state, and not have it as it appears on that exhibit.

Mr. Mathewson: He did say so yesterday, if you will look at the testimony.

The Master. Gentlemen, the more time you waste in repartee and argument, the less you will have for the examination of witnesses.

Q. I ask you whether the column "Edgerton's values" did not in fact include value which you yourself have put on part of the apparatus? I ask as to the second column. Are those all values which were given by Mr. Edgerton, or did they include value which you gave to the apparatus, and which were taken by Mr. Edgerton, for the reason, as stated by him in his testimony, that he had neither the time nor the opportunity to appraise them himself?

45648

Mr. Mathewson: We do not know why he took them.

A. These were taken from Mr. Edgerton's details; that is all I know about it. I did not compare it with his testimony.

Q. Did you read his testimony?

A. I read his testimony, but I did not compare this with his testimony. I had the figures right before me, and there was no necessity for referring to any testimony.

Q. You do not find that Mr. Edgerton agrees with you in all of your values, do you?

Mr. Mathewson: Is this important? I object to this. Mr. Edgerton stated his own conclusions.

The Master: It is proper cross-examination, if Mr. Kirby thinks it worth while to pursue it.

Mr. Kirby: It simply carries a wrong infer- 45650
ence, and I do not think the exhibit should stand in that way without explanation.

Q. I refer you to the third column of this exhibit where it says: "Omissions"; have you a detailed statement showing what those omissions were?

A. They all appear in my testimony. They were omissions taken from my own schedules.

Q. Do you mean to say that your testimony of yesterday gives the apparatus the values of which when totalled up will equal the value set down in that third column marked "Omissions."

A. My previous testimony does not, the testimony of yesterday.

45651

Q. Then these are values which you yourself have given to apparatus of parts of the plant which you did not appraise at the time you gave your prior testimony?

A. Oh, yes, I did; these are values taken from my testimony and from my schedule, which I did not find in Mr. Edgerton's valuations.

Q. Will you tell what they are?

A. Yes, I can tell you that; it took a long time to find that out.

Q. You have not prepared a statement of that?

A. Here is Mr. Edgerton's statement; I have got it right here.

Q. You have not prepared a detail of this third column?

A. No, I had not the time, but I can give it to you all from here, item for item. In the instance of the 132nd Street station—

Mr. Mathewson: There is nothing in here from the 136th Street station, Mr. Mayer.

Q. Take the largest, the 99th Street plant. There is $50,000 or more; that is the only item that amounts
45653 to anything, $50,000 and more; take that and tell me what it is. The other amounts are so small that I cannot waste much time on it.

A. The total amount was $50,493. Can I see the original sheet?

By Mr. Mathewson:

Q. Yes, you may have taken that out of the wrong station; it doesn't seem to run parallel exactly (hands witness original sheet). May it have been in connectings?

The Witness: I am trying to find out. I cannot tell without reference to my detailed notes. There is one item 11 through benches of sixes, back to
45654 back, $48,620. There is no valuation in Mr Edgerton's schedule for it.

By Mr. Kirby:

Q. Are you not aware that Mr. Edgerton did value those eleven through benches, giving the cost new $39,000 with depreciation of 6 1/2 per cent, giving it a value of $33,307, and so stated in his testimony?

A. It don't appear in this schedule.

Q. That is in your typewritten copy of the schedule?

A. That is the schedule which was furnished me

Mr. Mathewson: Furnished by you to me, Mr Kirby, and the one that this witness had to examine.

Q. Did you compare that with the exhibit in this case?

Mr. Mthewson: Why should he? It was a carbon copy that you delivered to me for our purposes, and if you made a change in the exhibit afterwards, and did not notify us, we are not to be held responsible.

Mr. Kirby: I have made no change in the exhibit whatever, but if Mr. Mayer had read Mr. 45656
Edgerton's testimony he would have found a reference to these very benches, and the value given.

Mr. Mathewson: There is your cover and the whole thing as it was delivered to us. Do you mean to say that there has been an addition of that to the exhibit?

The Witness: I do not know whether it is in the exhibit, or whether it is not; I only know it is in the testimony.

Mr. Mathewson: There is the carbon copy which was delivered to us.

The Witness: The item is there but there is no value given. 45657

Mr. Mathewson: And that was filed and printed as an exhibit in this case.

Q. Let us take the one for the 14th Street plant, $13,279—

A. Here is another item, I find it now, $1,650 for two Mackenzie exhausters page 5.

Q. Don't you find a value in the very schedule that you have before you of $3,726 for those two Mackenzie exhausters?

A. The connections for the exhausters have been omitted. I think it is connections; I will refer to my detailed schedule? What station is this?

Q. Just what do you mean has been omitted, if anything?

Mr. Mathewson: I will say in regard to this typewritten exhibit that a copy was given to us long before the other was printed, and was given to the witness long before it was printed.

Mr. Kirby: You will remember that at the time Mr. Edgerton was testifying he called attention to some errors, not only of omission, but of adding in value twice.

Mr. Mathewson: I called his attention to those
45659 on cross-examination, and my own recollection is that this was one of them now you mention it, but of course, I did not go over those schedules.

Mr. Kirby: I am trying to get nothing more than the fact.

Mr. Mathewson: I understand that. The amount of the omission is not very much. It is only for accuracy that the witness has stated what they appear to be in Mr. Edgerton's schedule. It is fair to say that our question is not so much with the omissions, which are not large in amount, but the basis of valuations which Mr. Edgerton assumes in the property which he did include and
45660 value. I think that is clear.

The Witness: I have got it now.

Mr. Mathewson: What is the item?

The Witness: My price of $1,650 for the two Mackenzie exhausters—Mr. Edgerton has got a price below it of $3,726, which refers to the Greenfield vertical engines, the next item which was also taken from my schedule at the same price, but those figures are badly mixed in Mr. Edgerton's schedule; they were not copied right from my valuation.

Q. The Greenfield vertical engine has been appraised by Mr. Edgerton has it not?

A. He has given a price for Greenfield vertical engines of $3,720, and in my valuation they are under the head of Mackenzie exhausters.

Q. The "value as per Meyer" refers to the Mackenzie exhausters?

A. No, he has given a wrong price; that refers to the Greenfield engines.

Q. Be that as it may: what value do you give to the Mackenzie exhausters?

A. $1,650.

Q. Then Mr. Edgerton has given you the benefit of the difference between $3,726 and $1,650, and in- 45662
stead of being an error in the manner you have stated it is an error in the other direction, because he has valued, as you will notice on the schedule, the Greenfield engine himself and given the cost as $2,000, factory price, and with depreciation value of 15 per cent, $1,700?

A. He applies the price which I gave him in my schedule for Greenfield engines for Mackenzie exhausters, and did not put down the Mackenzie exhausters, which would be probably the difference between the two.

Q. And it would be a debit instead of a credit, and it is really not worth while taking up this time about 45663
it; and the fourth column of this Exhibit No. 372 is simply additions as you made them from the values you have set down there?

A. Which I set down as being omitted.

CROSS-EXAMINATION BY MR. BURR:

Q. Have you been in Astoria lately?

A. Yes.

Q. When?

A. Last Sunday.

Q. How many times have you been there this month?

A. Three times.

Q. Have you examined the plant over there?

A. I have.

Q. Within the past month?

A. Yes.

Q. And since Dr. Marks and Mr. Edgerton gave their testimony have you examined the plants of all the companies?

A. No, I have not.

Q. I mean, for the purpose of comparison?

A. No, it was impossible; I did not have the time to do that.

45665

Q. You did, as far as you were able, with the idea of correcting any errors in your previous valuations?

A. Yes.

Q. Did you find any errors in your previous valuations or your inventory?

A. No, sir.

Q. You have described some errors here to-day, have you not, in your inventory?

A. Do you mean these errors referred to just now?

Q. Yes, and before this morning?

A. That is to say in Mr. Edgerton's valuation that I referred to just now; it was not in my own.

45666

Q. In making your examination of these plants and of the apparatus if I understand you correctly Mr. Mayer you had the advantage of the aid and assistance of the officers and employees of the Consolidated Gas Company and were enabled to inspect and examine and measure and weigh to your heart's content, were you not?

A. Yes.

Q. And you had all the information which was at the disposal of the officers of the company?

A. Yes, of those that I found at the gas works.

Q. You spent, you say, 3,780 hours in making an

examination which has enabled you to appear here and testify so positively with regard to the correctness of your inventory and your valuation; is that correct?

A. Well, with regard to 3,780 hours, that referred to the actual time spent in examination of the plant, not in preparation of the schedules or the detailed valuation of the plants, only in the examination of the plant itself.

Q. That is what I thought, how many hours did you spend in the preparation of the schedule?

A. As compared with that—

Q. I am not asking you to be so particular as to 45668
designate the number of hours. Can you give me the number of days or weeks?

A. Probably at least the same number of hours if not more.

Q. Now, allowing eight hours a day that would be 473 days or 15.7 months, would it not, for the 3,780 hours?

A. Yes, if your calculation is correct. I say, yes, but I have not figured it over.

Q. And allowing 12 hours a day, it would mean 315 days or 10.5 months, assuming that my calculation is correct?

A. I presume it would. 45669

Q. You saw and consulted, undoubtedly, the inventory and calculations presented here by Dr. Marks and Mr. Edgerton, as you say, and they show at least great industry on the part of those gentlemen?

A. Yes, I don't doubt that.

Q. If I understand you correctly it is absolutely impossible for any man with the knowledge and information which Bartlett, Hayward & Company possesses as to the cost of construction of gas plants under New York conditions, to make a fair and reliable estimate as to the cost or value of these plants in the City of New York today?

A. Generally speaking, yes, but I would like to modify that to this extent: that it is absolutely correct in the instance of holders, and most of the apparatus.

Q. And how as to the buildings?

A. Not to the buildings, because we do not construct buildings ourselves.

Q. I will ask you, after the length of time that you have spent in the actual examination of plants and holders, are you prepared to swear now here that there are no foundations in any of the plants of the Consolidated Gas Company which are unused?

45671 A. I do not know anything about unused foundations; my valuations only included those that are used.

Q. I am asking you, will you swear that there are no foundations in the plants which are not in use? Can you swear under oath that there are no foundations in the plants of the Consolidated Gas Company which are not in use?

A. I haven't paid any attention to that; I have only valued the foundations which are in use.

Q. In other words, there may be some foundations in the plants of the Consolidated Gas Company which are not in use, and those you have paid no attention to?

45672 A. I don't know anything about those.

Q. And in ascertaining the depths and kinds of foundations which you have testified regarding if I understood you correctly you were helped and aided by the original drawings used at the time of the construction of these foundations and which the employees and officers of the company were using at the time of the construction of these foundations?

A. That is so, the ones which I found at the works of the various stations.

Q. So that as regards those particular structures,

you took the dimensions and you took the character of them as they appeared in those drawings?

A. To a large extent.

Q. Are you familiar with the exhibit introduced in evidence here known as Rowland's inventory?

A. I have never seen it and never heard of it until I came here to testify; I never heard of its existence.

Q. Then that accounts probably for what I am going to call your attention to; you have not accepted, therefore, the valuation placed by Mr. Rowland upon the various buildings itemized in his inventory, have you? 45674

A. I have never seen it, Mr. Burr.

Q. You are quite sure you have made no mistakes of any moment in your calculations or in your inventory, and as I understand you you would desire to be understood as saying that if these other experts had all the information that you had they would have arrived at the same conclusions that you have?

A. No, I don't mean to say that. As far as I know there is no error in any of my calculations, because they have been checked time and again. I do not mean to say that I have checked them all myself because that would have been impossible, but I do not believe there are errors, and there are none according 45675
to my knowledge. As far as the other gentlemen reaching the same conclusion as I have is concerned, I am willing to state that under no circumstances would they reach the same conclusions, because they have not the practical experience in valuing these buildings that I have, and they could not reach the same conclusions even if they had the same length of time at their disposal to reach these conclusions.

Mr. Burr: The conclusion is obvious.

Q. You say that Mr. Edgerton and Dr. Marks depreciated the U. G. I. water gas apparatus 20 per

cent. Is it not a fact that Mr. Marks did not depreciate the U. G. I. water gas apparatus at 21st and 42nd Street stations at all?

A. I don't recall that at all; did I say that he depreciated it twenty per cent?

Mr. Mathewson: I do not think he said that generally.

Mr. Burr: I have here this question in the typewritten record:

"Q. Now did you observe that Mr. Edgerton's and Dr. Marks' depreciation for both the old and new U.
45677 G. I. stations, which had been for many years in operation, was twenty per cent?

"A. I did."

Q. Aren't you mistaken in that? Is it not a fact that Dr. Marks did not depreciate the U. G. I. apparatus in the 21st and 44th Street stations at all?

A. I cannot state that from memory. I would have to refer to the testimony and my notes and everything else.

Q. Are you not aware from the exhibit that you introduced yesterday that Dr. Marks did not depreciate the 132nd Street station at all?

A. Which exhibit is that?

Mr. Burr: I will give it to you in a second.
45678

A. I call your attention to the fact that there is an error there. What I said was, I think, that Mr. Edgerton *marks* the old U. G. I. sets as depreciated.

(Here Mr. Mathewson refers to the printed record at page 6599.)

My question in substance was whether Mr. Edgerton marks the old and new U. G. I sets as having depreciated ten per cent, but not twenty per cent; nor did the first part of the question read as the stenographer has it. I know there was nothing about twenty per cent, for I asked no such question.

Mr. Burr: And as far as Mr. Marks was concerned?

Mr. Kirby: Not so far as Mr. Edgerton was concerned?

Mr. Mathewson: No, nor as far as Mr. Edgerton was concerned.

Q. The depreciation which you have allowed was only the depreciation for visible decay, and allowed nothing for inadequacy and increasing demands and obsolescence due to the progress of the art of gas making?

A. The depreciation which I allowed in my opinion 45680
based upon practice for the last twenty-five years of making estimates for repairs and I considered that the actual depreciation is represented by the cost of repairs required to put the apparatus in condition as good as new and to serve its purpose intended. As to obsolescence and inadequacy I can only state what I have stated before, that in my opinion there is no obsolescence or inadequacy from the sources which you mention, because every year each of the plants receives additions or alterations or substitutions of apparatus. Old apparatus are substituted by new ones; and in fact all of the plants are kept up to the best possible condition, and are supplied constantly with 45681
modern apparatus in order to produce the best and most economical results; therefore, I cannot conceive that obsolescence or inadequacy, is in existence.

Mr. Mathewson: The question as it should be, on page 6599 is:

"Now, did you observe that Mr. Edgerton marks depreciation for both old and new U. G. I. stations which have been for many years in operation as ten per cent?" instead of twenty per cent. The answer remains as before:

"I did."

Q. That depreciation which you allowed for three renewals and extensions which you have referred to as due to the causes I have named as inadequacy, etc.?

A. No, it is due to wear and tear principally, and in this instance of course the time was too short to make a detailed estimate of the cost of repairs, to establish a positive factor of depreciation, because such depreciation, based upon the actual cost of repairs, would require more time than the valuation of the new apparatus and take them apart to a certain extent to find out what repairs would be needed. It is my
45683 opinion, based upon my practice and general knowledge, based upon the approximate cost of repairs for such apparatus.

Q. These gentlemen who undertook to follow you on behalf of the defendants, making inventory and giving valuation of these various plants and apparatus, they had the benefit of your knowledge as given here where you assumed to give the age of the different plants, the dimensions, size, weight, etc., and have used those to a very large extent, have they not?

A. I think they have.

Q. Referring to Exhibit 371, 14th Street station, you stated that there was an omission of eight holders?

45684 A. Yes.

Q. Your valuation for them being $507,398?

A. Yes.

Q. Will you look at Complainant's Exhibit 70 in this case, page 193. I will call your attention particularly to the item there marked No. 19, gas holder tanks. Six tanks, Nos. 1, 2, 3, 4, 5 and 6, including guide plates and inlets, $198,000?

A. Yes, sir.

Q. Item No. 21, gas holders—six gas holders and frames, $198,000.

A. Yes, sir.

Q. Now, referring to Block Number 7, page 197 of the same exhibit, Item No. 41, gas holders—two gas holders and frames, $52,000; Number 40, gas holder tanks—two tanks, including guide plates and well, $60,000?

A. Yes.

Q. Total for eight holders, Rowland's valuation in 1884, $508,800?

A. I don't see that last.

Q. The exhibit to which I am calling your attention is Rowland's inventory, so I ask you if you do not see there the total valuation as given by him, amount- 45686
ing to $508,800?

A. $116,364.

Q. The $198,000 that I first called your attention to, and the other $198,000, the $52,000 and $60,000 amount to $508,800?

A. In connection with the former, that may be, but I have not been able to figure it up in my head as you call off the figures.

Q. Refer to page 198 of the same exhibit and take the recapitulation as given there?

A. The total value of machinery, buildings and holders?

Q. Yes, $1,706,294? 45687

A. Yes.

Q. Don't you observe that the $508,800 valuation, assuming my calculation to be correct, the valuation of the eight holders, is included in this $1,706,294?

A. I presume it is; I haven't seen this before, I am not sure, but I presume it. It appears to be.

Q. Will you refer to Dr. Marks' testimony, page 5063, recapitulating the inventory, 14th Street; don't you find that this total of Mr. Rowland's of $1,706,294 is the first figure in the recapitulation?

Mr. Mathewson: Show him the testimony.

45688 Frederick J. Mayer, Cross.

Q. (Handing testimony to witness.) Don't you find that to be the first item in the inventory of the 14th Street station, Consolidated Gas Company, 1906, as given by Dr. Marks as it appears on that page, 5063?

A. It is the same as it appears on this page, 198.

Q. As it appears in Mr. Rowland's inventory?

A. I don't know how it appears in Mr. Rowland's inventory. This is the first time I have seen Mr. Rowland's inventory.

Mr. Burr: It will be conceded that this is Rowland's inventory, an exhibit in this case?

45689 Mr. Mathewson: That is what it is stated to be "total actual first cost of buildings and structures, 1884, $1,706,294." If the holders were included in that I suppose the witness assumed, as I think I would have assumed, that the buildings and structures did not include holders and apparatus. I did not know about that of course; I haven't checked them up.

Q. If this total, given there by him, $1,706,294, includes the $508,800 which you say was omitted for those eight holders, then you are mistaken as to that?

A. I cannot give my opinion as to that; I have not
45690 added up this valuation and I don't know what it is.

Q. You can see; there is the exhibit before you.

A. I see some figures here, but I cannot give an opinion on them unless I read the whole testimony.

Q. You find figures on the pages mentioned, do you not?

A. I find the figures printed in this book.

Q. Your own valuation of those eight holders in 1905 is $507,398, is it not?

A. Yes, that includes the tanks.

Q. Mr. Rowland included the tanks, as I have shown you?

A. I can form no opinion about what Mr. Rowland included; I have not read it and I do not know.

Q. I referred you to it where it appears at page 197, Block 7, Items No. 40 and No. 41.

Mr. Mathewson: If it relates to that I suppose it can be pointed out.

A. Under that item it refers to two tanks, gas holder tanks—two tanks, including guide plates and well.

Q. $60,800? 45692

A. Yes, referring to two tanks.

Q. And Item No. 41, is two gas holders and frames, $52,000?

A. It does not include any tanks?

Mr. Mathewson: That is page 197, you are referring to, of the exhibits or the testimony?

Mr. Burr: Of the exhibit; Mr. Rowland's inventory.

The Witness: There are no tanks given in that last item. In Item No. 41 it says gas holders and in Item No. 40 it says two tanks, including guide plates and well.

Q. The difference between those two valuations is $1,402, which is all the depreciation you have allowed after twenty-two or twenty-three years of service? 45693

A. I cannot follow you in my mind. You can read it from that paper, but I have not made any comparisons between my values and Mr. Rowland's values.

Q. I am trying to follow you.

A. I have based my depreciation on my opinion irrespective of Mr. Rowland's, and therefore, I am unable to make any comparisons, as to my valuations or depreciations with Mr. Rowland's.

Q. Let us assume that this valuation of Mr. Row-

land's valuation is as I have stated, and the difference is as I have stated, $1,402. Is not that 27/100 of one per cent depreciation, and is it not a fact that it is about 1/100 of one per cent depreciation annually which you have allowed on those holders?

Mr. Mathewson: I object to this; here is Mr. Rowland's valuation, he gives certain figures and he says Mr. Mayer's is a certain other figure, and he says that the difference is Mr. Mayer's depreciation, which is ridiculous, of course.

Mr. Burr: That is what you had Mr. Carter for two days doing, making calculations of this kind.

45695

The Master: In view of what he says about his nonuse of Mr. Rowland's valuation, I do not see what use it is on cross-examination, even if it is correct. I do not see why it is not a matter for your brief.

Mr. Burr: This exhibit is an exhibit of the complainant's; they put it in to bind us by Mr. Rowland's valuations at that time.

The Master: It does not appear that it affects this witness's testimony.

Mr. Burr: I am simply calling his attention to Mr. Rowland's valuation in 1884.

45696

The Master: He says that he does not know anything about Mr. Rowland's valuation in 1884, and you cannot attack his appraisal by any question in regard to Mr. Rowland's valuation if he did not see it.

Mr. Burr: Except as regards the item of depreciation, showing that a certain valuation was placed upon these holders and tanks in 1884, and that there was a certain other valuation placed upon them after the lapse of twenty-three years, in 1906.

Mr. Mathewson: But not by this witness.

The Master: It seems to me very remote, but if you gentlemen want to spend your time on that instead of saving it for Dr. Humphreys or whoever else will be here tomorrow you may do it. I do not want to cut you off in cross examination, but it seems to me a little out of proportion to the importance of what else there is in the case.

Q. When you say that Dr. Marks agrees with your figures in regard to any of these matters, you do no mean that he follows you in allowing ten per cent for 45698
engineering and five per cent for interest, do you?

A. No, I am speaking of the total figures.

Q. If you add your ten per cent for general engineering to your valuation for these holders, $507,398 it gives you a total of $558,137 for the eight holders, and if you add five per cent to this for interest charges, does it not give $586,044, or $77,200 odd higher valuation on these eight holders than Mr. Rowland himself put upon them in 1884?

A. I do not know anything about Mr. Rowland; I cannot base any opinion on it, as I do not know Mr. Rowland's figures and do not know anything about them. This is the first time I have ever seen them. 45699

Q. But that would be the fact, assuming these figures to be correct?

Mr. Mathewson: I suppose your computation is correct, but the witness would have to go through it to establish its correctness.

Q. Is that correct?

A. I presume so.

Q. Will you refer to Complainant's Exhibit No. 70, page 214, of this same book?

A. Yes, sir.

Q. I call your attention to the item house No.

10, brick building on concrete foundation, composite roof, lime room and foundation for iron work, purifier house 66x184 feet?

A. I do not see that.

Mr. Mathewson: That is Mr. Rowland's valuation again?

Mr. Burr: Yes, $33,265.

The Witness: Yes, I see it.

Q. Page 215, House No. 9, 66 by 184 feet, $18,313?

A. Yes.

45701 Q. House No. 8, condenser and scrubber house, 66 by 184, $43,517?

A. Yes, sir.

Q. House No. 7, storage warehouse, 66 by 184, $24,435?

A. Yes.

Q. Page 216, House No. 6, storage warehouse, 66 by 184, $27,335?

A. Yes.

Q. House No. 5, storage warehouse, 66 by 184, $23,135?

A. Yes.

Q. House No. 4, storage warehouse, 66 by 184,

45702 $26,135?

A. Yes.

Q. Page 217, House No. 3, 66 by 184, $24,771?

A. Yes.

Q. House No. 2, storage warehouse, 66 by 184, $25,443?

A. Yes.

Q. Is not the total of these valuations given by Mr. Rowland in 1884, as appears by that exhibit, $246,349?

A. The total was $463,131. You did not read all the figures on those pages?

Q. I am referring you to those particular houses?

A. I cannot follow you as quick as you can read and figure up these figures to see if they are right.

Q. We have had to do considerable figuring.

A. Well, I cannot do it.

Q. If you take a piece of paper and a pencil, you can follow me?

A. Then you must not read so quick: you must give me time to put it down.

Q. If you put down the figures, and Mr. Mathewson will follow the exhibit, we will get along.

Mr. Mathewson: I think I ought to say here 45704
for the record that this is merely taking certain buildings described in the exhibit which Mr. Rowland appraised at a figure in 1884, and taking certain other buildings described in the exhibit; and, assuming that they compact, although Mr. Mayer includes foundations for apparatus and Mr. Rowland perhaps does not, there is no evidence as to how the building is changed, and he is asked what the difference is between two amounts. If this line is to be pursued, it seems to me it it is wholly useless as a basis of comparison, and I do not want my time in putting in my direct testimony from my chief remaining witness cut 45705
down, if this consumes a great deal of time. I do not see that it is important.

Mr. Burr: It is very brief; have got it in concise form and it is merely to call the attention of the Court to the value of depreciation as allowed by Mr. Mayer.

The Master: You will have to have the time to finish up your case, and it will come out of the other side, Mr. Mathewson. They can cut short their examination of some other witness. I do not think it is of any material importance myself.

45706 Frederick J. Mayer, Cross.

A. $246,349.

Q. Are not these the buildings on the block partially bounded partially by Avenue A and other property on Avenue A, 20th Street, East River and 21st Street, with the exception of the meter house which is not taken into consideration?

A. I am not familiar with those.

Mr. Mathewson: That is true. Take it out and look it over.

Mr. Burr: Yes, he has apparently never looked at Mr. Rowland's valuation.

45707 The Witness: I do not see here a description of the block that you refer to.

Q. Is not that so?

A. With the exception of the meter house—I have to find that out; which meter house is it?

Mr. Burr: The meter house, 21st Street and Avenue A.

Mr. Mathewson: Now, are there any other buildings in that schedule, which is called Rowland's appraisal, which were not included in the figures given you and which you have just added up? There may be buildings specified in some other place in the exhibit; I confess I do not know.

45708 Mr. Burr: Mr. Mayer is familiar with them. He has valued them.

Mr. Mathewson: Not in regard to that exhibit, he knows nothing about it.

The Master: What I do not understand is this: Unless there is some evidence in the case from some of these witnesses, I do not understand how the valuation made by Mr. Rowland in 1884 can be of any value as compared with the valuation made by this witness in 1906. *Non constat*, but the property may have changed in a dozen dif-

ferent particulars between those two dates. Suppose the wall has fallen down; suppose one story has been added to it, or something of that kind. How any comparison based on those two valuations can be of materiality here, I do not see.

Mr. Burr: The testimony is—Dr. Marks says that he adopted Mr. Rowland's valuation and he inspected the buildings and he gave his testimony as to the character and appearance of the buildings.

The Master: But this witness says that he does not know anything about Mr. Rowland's valuations, and did not take them into account. 45710

Mr. Burr: That is what he should have done in making his depreciation, we contend.

The Master: That is a matter of argument. You cannot gain anything by putting him through these valuations here, except to waste time.

Mr. Burr: I made the same objection to Mr. Carter's valuations, when he was allowed to go on with carefully prepared papers on every conceivable subject.

The Master: I am not going to cut you off, only I am giving you fair warnings that you may need this time for something else that you may consider more important. 45711

The Witness: Yes, apparently they are all the buildings contained in this paper or the value of such buildings as taken from this exhibit, with the exception of the meter house, pages 213 to 218.

Q. Referring to your testimony on page 1478, Shed No. 1, as given by you, south side of 21st Street, corresponds to Shed No. 2 on Mr. Rowland's inventory, does it not? Are not those the numbers made by Mr. Rowland on the doors of those sheds?

A. What shed is that?

Q. Your testimony, page 1478?

A. What page is it here in the exhibit?

Q. I am calling your attention to your testimony at page 1478. Look at that page of the record; you gave certain valuations as they appear on that page, of the sheds numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, didn't you?

A. I only find up to 5. Sheds Nos. 1, 2, 3, 4 and 5. Are they marked as Shed 8, 9 and 10, purifier house and condenser house?

45713 Q. You gave certain valuations there for those sheds, including a shaving and scrubber house, purifier house, condenser and scrubber house and Shed No. 10, purifier house. The total of your valuations of those sheds appears to be $677,183, does it not?

By Mr. Mathewson:

Q. Are they valued as sheds in your testimony?

A. Only from 1 to 5.

Q. What are the rest?

A. Purifier house and condenser house, and another purifier house.

Mr. Mathewson: Then those were the sheds, when you valued them?

45714 The Witness: No, a purifier house and condenser house.

By Mr. Burr:

Q. And you call them sheds, don't you?

A. No, I do not. You call them sheds. You call them sheds, 8, 9 and 10, but I call them purifier house and condenser house.

Q. I will read it correctly: Shed No. 1, Shed No. 2, Shed No. 3, Shed No. 4, Shed No. 5, and Shed No. 6?

A. There is no Shed No. 6 here.

Q. Shed No. 7, shaving and scrubber house?

A. No Shed No. 7 here.

Q. Well, we will call it shaving and scrubber house. You valued that at $64,037, didn't you?

A. The shed, $67,846; purifier house $97,626.

By Mr. Mathewson:

Q. Is that one shed or all the sheds, at $67,846?

A. Each. That is No. 1 shed.

By Mr. Burr:

Q. And the condenser and scrubber house, you place a valuation on that also?

A. Yes, $97,626.

Q. The purifier house, you give a valuation to that 45716
of $94,697?

A. $94,697.

Q. Is not the total of your valuation of those houses and sheds that I have called your attention to $677,183?

A. I will have to figure that up first. You include the two purifier houses and the condenser house, do you?

Q. Yes.

A. I make it $629,179.

Q. Will you add 15 per cent; and see what that makes?

Mr. Mathewson: Why? How do you know, even on your theory, that 15 per cent, was not 45717
included by Mr. Rowland in his appraisal, assuming that the buildings are the same.

Mr. Burr: I am giving you the benefit of adding his 15 per cent or 10 per cent and 5 per cent.

A. Do you want 10 per cent and 5 per cent, or 15 per cent? It makes quite a difference.

Q. 10 and 5?

A. $725,652.

Q. Will you deduct Mr. Rowland's valuation of $246,349 from that?

A. $479,303.

Q. You do not claim that that difference is due to foundations, do you?

A. Why, Mr. Burr, I have already stated before that I do not know anything at all in comparison with Mr. Rowland's valuation; I cannot tell anything about it, as I know nothing about Mr. Rowland's valuation. I do not know how he did value the buildings, so that I am unable to make any comparison, and I cannot tell you.

Q. You refer on page 1556 to some brick and
45719 brownstone used as an enclosure for holders?

A. That was at 18th Street, wasn't it?

Mr. Mathewson: Yes.

Q. Are not the brownstone trimmings on that building disintegrated and in very bad condition?

A. Yes to some extent they were disintegrated, but just how much I do not recall at the present time.

Q. Don't you give a valuation there of $155,784, I think it is, is it not (showing to witness)?

A. I gave my valuation $169,328.

Q. What is the depreciated value?

A. $155,785.

Q. If you add to that depreciated value your ten
45720 per cent and five per cent, what do you make it? Or adding in round figures fifteen per cent, which amounts to $23,368, if my computation is correct, does not that amount to $179,151?

A. If your computation is correct it would amount to about that, yes.

Q. Will you refer to page 184 of Exhibit No. 70, Block No. 2, West 18th Street?

A. Yes.

Q. Above 10th Avenue, two enclosed gas holders; also well, gas holder building, 188x92, brick with heavy stone trimmings, extra heavy roof, and internal

framing, $45,250. That is the same property which you valued with fifteen per cent, at $179,151?

A. The location here would indicate that, yes, sir.

Q. Subtracting the valuation placed by Mr. Rowland, $45,250 from that, leaves a difference of $133,901 excess placed by you upon this building twenty-two years after Mr. Rowland valued it, is that the fact?

A. I only valued a building in the same location; whether or not it was the same building I could not tell, and therefore I cannot make any comparison with any of Mr. Rowland's statements; it is absolutely im- 45722
possible for me to do so.

Q. There is only one building there, which occupies the whole block?

A. I do not know whether that building was in the same condition at the time of my examination as it was at the time Mr. Rowland examined it; besides which the cost for materials and labor at the present time is entirely different from what it was at that time.

Q. In your testimony regarding the 18th Street station you mention as an omission five sheds amounting to $145 in a total of $224,000. Have you seen those sheds? 45723

A. Where was that, at 18th Street?

Q. Yes.

A. Yes, I have; last summer I have.

Q. As a matter, would you say that they were worth five dollars collectively?

A. They are worth just what they are valued in my schedule; at that time I valued them carefully and I looked at them and examined them carefully.

Q. Are they fit for anything more than kindling wood?

A. Yes, they served the purpose for which they were intended at the time of my examination.

Q. Don't you know that Mr. Marks stated in his testimony that he purposely left them out of his valuation and that it was not an omission in the sense in which you use it?

A. It was an omission that appeared on the schedule.

Q. Are you not aware that the $11,800 of which you spoke, for foundations, at the 21st Street station was purposely omitted, according to the testimony of
45725 Dr. Marks, so far as the figures being included in the cost of the buildings was concerned?

A. What foundations do you refer to?

Q. 21st Street.

A. Which ones, there are lots of foundations at 21st Street.

Q. Referring to your omissions, $11,800, old retort house; you gave a valuation of that as $71,117, and you referred to an omission by Dr. Marks.

A. What was the amount?

Q. $11,800.

A. Yes, Item No. 22, foundation for benches, omitted from this schedule.

45726 Q. Don't you know that that item was included in the cost of the buildings, from his testimony?

A. No, I do not; I do not see why it should be.

Q. You have that here; and the other item, $1,650 for furniture, marble fireplaces and so forth, was not that according to Dr. Marks' testimony purposely omitted, as a lot of antiquated relics?

A. I cannot recall his testimony at the present time. I know it is not in this total valuation. It is in use and is worth something; it was in use when I examined the plant.

Q. How about the other condenser; Item No. 100,

marked ten per cent completed, $30,700. Do you recall that?

A. That item was omitted entirely.

Q. Don't you recall testifying that there was 90 per cent of that yet to come?

A. No, 90 per cent of it was completed at the time; ten per cent was to come, if I remember correctly. That condenser was partly erected, as I remember it; and most of the material was lying on the ground.

Q. On the contrary, was it not marked ten per cent completed?

A. I will not be sure about that, but the material 45728
was there. I cannot tell how much of it was erected.

Q. Item No. 115, three filter presses, John Johnson & Company, $2,550.

A. It was omitted entirely from this schedule, Dr. Marks' schedule.

Q. Those filter presses were abandoned, were they not?

A. Not when I examined the plant; they were in good condition and could be used at any time.

Q. I call your attention to this other item, 16-inch Wiley Proportional meter, $1,600, Item No. 165. Was not that deemed unnecessary, and was it not merely experimental?

45729

Mr. Mathewson: Deemed by whom unnecessary?

A. It was in position and ready for use; I presume it was in use at the time, and it was, for all I know.

Q. Dr. Marks testified that it did not appear to be in use; have you read his testimony?

A. I cannot recall.

Q. Item No. 28, $12,700 foundations for benches?

A. It is omitted from this schedule.

Q. Dr. Marks testified, didn't he, that that was valued with the building?

A. I do not recall that.

Q. Item No. 177, steel tank, $655. Did you find that yourself, Mr. Mayer?

A. Yes.

Q. Are you quite positive that that steel tank is in existence?

A. I do not know whether it is now it was at the time I made my examination.

Q. Do you recall the day when you saw that particular steel tank?

A. The day?

45731 Q. Yes.

A. No.

Q. About how many months ago was it?

A. About seven.

Q. Dr. Marks testified that it could not be found by himself or the guide?

A. I cannot help that; that is not my fault.

Q. Referring to the 42nd Street station, you called attention to certain omissions of Dr. Marks, omissions which you say amount to $6,077, Item No. 21, specifically, of that statement?

A. $156, is it not?

Q. Didn't Mr. Marks include that in his estimate

45732 for No. 2 coal shed?

A. It is marked here carpenter shop, but how he makes a connection between carpenter shop and No. 2 coal shed, I do not know.

Q. Dr. Marks testified that he did include it in his estimate for No. 2 coal shed?

A. I did not know that. The item is here but no valuation. That is the reason I marked it as an omission.

Q. The point I want to make is this: If you read Dr. Marks' testimony he mentions these various things, and they were not negligently omitted. He

did not value them because he did not consider they had any value. For instance, take item number 50, cast iron box?

A. I say I cannot recall all the testimony.

Q. In regard to that he said that the attendant knew nothing of its use, and it was apparently out of use. You say it is an omission of $636?

A. Yes.

Q. Item number 32, cribbing and earth work filing for eight oil tanks, $2,438?

A. It is omitted here.

Q. Mr. Marks allotted that to the general expense 45734
of construction, didn't he, in his testimony?

A. I cannot recall it, but if he did it did not belong there; it belongs here where the item is.

Q. I call your attention to Exhibit No. 70, of page 242. Don't you find that Mr. Rowland gives four gas holder tanks at $120,000 and four telescopic gas holders at $90,000, being a total of $210,000.

Mr Mathewson: At what works?

The Witness: Eleventh Avenue on the Hudson River, 41st and 42nd Streets. It is marked here.

Q. Will you refer to items 94 and 95 of the inventory?

45735

A. Of my inventory?

Mr. Mathewson: You will have to look at your inventory.

The Witness: Mine is not numbered.

Mr. Mathewson: I know it, but I guess you can find it.

The Witness: What station, is it?

Mr. Mathewson: 42nd Street station apparently

Q. Referring to your inventory, see if you did not give us a total depreciated value of those same holders

in 1905 or 1906, $223,500, adding to the depreciated value of those same holders in 1905 or 1906, $223,500, the value given by you, $245,209, adding to the depreciated value 10 per cent. What do you find the value given by you for those four holders in that inventory?

A. These are the four holders, 250,000 feet capacity?

Mr. Mathewson: Just look and see on the schedule.

The Witness: I am looking to see if I can compare them; I do not see how I can.

45737

Q. What value did you give for those four gas holder tanks and four telescopic gas holders?

A. For the tanks I gave $120,384, for the holders I gave $112,180.

Q. That is $232,564?

A. Yes.

Q. Now, you add 10 per cent to that and then 5 per cent; what do you make it?

Mr. Mathewson: Did he add 10 per cent on holder stations?

The Witness: This is not a holder station; this is a plant.

45738

A. To the whole plant I add that, but not to that particular item.

Q. If you add it to those two items, of which you have given the value as $120,384, and $112,180, what do you find it to be?

Mr. Mathewson: He did not add it, but if you want him to I suppose he can do it.

Mr. Burr: Yes, I would like to have him act as my computer temporarily.

A. $253,110.

Q. Now, add the five per cent?

A. $268,610.

Q. That is a difference of $58,210 from the valuation placed by Mr. Rowland on those same holder tanks, is it not?

Mr. Mathewson: I do not know whether they are the same ones or not.

A. There is a difference between the figures given in this book and the figures given by my valuation, yes.

Q. I will not bother you to go over the omissions to which you have referred regarding the 44th Street station save to say that they were omitted according to Dr. Marks for the same reasons, either because he 45740
did not deem them of value, or because he could not find them in his investigation.

Mr. Mathewson: Is that your testimony or his?

Mr. Burr: I am asking him in regard to it. He is criticising Dr. Marks' statements.

Mr. Mathewson: I am asking whether it is your testimony or his.

Mr. Burr: It is my statement based on Dr. Marks' evidence, and that applies to all the other stations.

Q. Now, if you refer to your Exhibit No. 373, introduced by you yesterday, you gave the exact cost 45741
per cubic foot of contents, not including foundations at fifteen cents; is that so?

A. No, that includes a certain part of the foundations, it included foundations or ordinary depth, four feet.

Q. Then, you mean by that that a cubic foot of contents is not computed to include the foundation, but that the cost of the foundations is included in the fifteen cents?

A. Ordinary depths of foundation; to a depth of four feet.

Q. Didn't you observe that Dr. Marks fixes fifteen cents per cubic foot as the true first cost of this building?

A. I believe that his figure was identical with mine in that instance.

Q. And that in his computation he says as to all these buildings he has included not only the contents of the superstructure, but also to give full measure, the contents of the cellar or basement. Do you notice that?

A. Well, the cellar or basement would form a
45743 part of that building, because my computation was based upon from the first floor line as far as the contents of the buildings are concerned, up to the edge of the roof. Now, if there was a basement under these buildings that would be included. Whether he did it on the same basis I am unable to tell.

Q. In regard to this particular 132nd Street station, as appears on Exhibit No. 373, don't you also note that the result of that computation from Dr. Marks' value is $569,604 as against $540,702 obtained by yourself with the assistance of plans and the figures and facts of the entire Consolidated Gas Company at your service, as you have stated, and do you
45744 now deem this a proof that Dr. Marks' valuations are liberal and more than fair to the Gas Company?

A. I do not know what you are talking about. I do not see any figure here of $569,604 for this building. The biggest figure is only $26,000.

Q. While Dr. Marks is looking for that I will call your attention to another matter. I call your attention to the recapitulation on the opposite page of Complainant's Exhibit 371. Have you got that there?

A. No, I don't know what it is.

Q. It is the exhibit offered by you yesterday?

A. Yes, I have it here.

Q. Now, I call your attention to that exhibit, Mr. Mayer, Exhibit 371, and to your recapitulation. Do you not find on page 5108 of the testimony that Mr. Marks gives his actual present valuation at $9,348,692 for the property of the Consolidated Gas Company's plants?

A. I will have to see that testimony.

Q. Do you not find those figures given there, $9,348,692?

A. Yes, under the heading of estimates cost per annual thousand cubic feet of sales, 1905, the structural cost of buildings, apparatus and holders is given 45746
as $9,348,692.

Q. Now, referring you to the following pages, 5064, 5063, do you not find the depreciation given on the 14th Street station as $725,175, $13,200 and $6,472?

A. On page 5063?

Q. Yes.

A. Yes.

Q. And on page 5064 do you not find depreciation for 42nd Street given as $472,182?

A. Yes.

Q. On page 5069 do you not find the depreciation for the 44th Street station given as $132,808? 45747

A. Yes.

Q. And I will read the rest of page 5076, and see if they are correct: 21st Street station, $612,304.

A. Yes.

Q. Page 5084?

A. I find these figures and I will try to follow as quick as I can, just hunting up the figures.

Q. Page 5084, 99th Street station, $129,974?

A. Yes

Q. Page 5089, 18th Street station, $165,200.

A. Yes.

45748 Frederick J. Mayer, Cross.

Q. Page 5093, 63rd Street station, $43,644?

A. Yes.

Q. Page 5095, 65th Street station, $81,490?

A. Yes.

Q. Page 5098, 111th Street station, $96,780?

A. Yes.

Q. And on page 5101 and on page 5103, no depreciation is charged against the 132nd Street station or against the Inwood station?

A. Yes.

Q. Making a total of $2,479,323, if you want to verify that?

45749

A. That is right.

Q. And that makes the actual present structural value given by him as a grand total, $11,828,020, does it not?

A. Yes.

By Mr. Mathewson:

Q. That excludes the omitted items however and of course the 10 per cent and 5 per cent?

A. As the figures appear I think it would.

By Mr. Burr:

Q. If you read the testimony as to the inventories actual structural cost of the buildings, manufacturing apparatus and holders of the Consolidated Gas Company, which was given by Dr. Marks with the statement that it is not customary in inventories where all the various subjects are in position to add either 10 per cent or 5 per cent to the cost as was necessarily done in the case of preliminary estimate of proposed works made by engineers from your inspection of the inventory prepared by Rowland did you not observe that this was not done by Mr. Rowland in the inventory prepared by him in 1884, Complainant's Exhibit 700?

45750

A. I did not inspect Mr. Rowland's valuation, therefore I cannot tell.

Q. Your total is $16,137,477, is it not?

A. I believe that is the figure.

Q. And that is $4,309,457 more than Mr. Marks' total of $11,828,020?

A. That was without allowing anything for the general engineering expenses and for interest charged.

By Mr. Mathewson:

Q. We will say that those items are items not valued, not omitted; or items whose value was included in the valuation of other buildings. Now the original structural cost as given by Mr. Marks as you have stated appears to be $11,828,020, and this 45752
subject to a depreciation of $2,479,328, which would be, would it not, about 21 per cent on an average and yields an actual present value of $9,348,692. Now, have you noticed in the case of the 14th Street station—

Mr. Mathewson: Is that a question?

Mr. Burr: I am now drawing his attention to the depreciation as made up by Rowland in the case of the 14th Street—

The Master: He said within five minutes, and three other times, that he didn't know anything about Rowland's appraisal at all, never inspected it.

45753

Mr. Mathewson: I don't believe he knows whether Rowland computes depreciation or not.

The Witness: I know nothing about Rowland's valuation.

Mr. Burr: Well, of course, I do not want to unduly protract the examination as a good deal of this is more argument than testimony, but I simply desire to call the Master's attention to the great differences which exist between the figures as found by Mr. Mayer and the figures as found by Mr. Rowland for the same property in 1884.

45754 Frederick J. Mayer, Cross.

The Master: I see, but it is a matter of argument rather than a question to this witness, who does not seem disposed to change his valuations at all in consequence of anything you bring out. He says he does not know anything about Rowland's figures.

Q. Will you look at Exhibit 370, 99th Street station, Item No. 2, generator house?

A. Is that the same as this (indicating a paper)?

Q. The generator house, Item No. 2, are not your cubical contents incorrect there? This is the East

45755 99th Street station; if your cubical contents are not wrong your multiplication of the 105,056 cubic feet at 13 1/2 cents is incorrect, is it not?

Mr. Mathewson: Multiplication on those two would not necessarily bring Mr. Mayer's valuation, because that is only a unit figure, the result of which he adds for foundations of apparatus, etc., beyond a depth of about four feet.

Mr. Burr: We will let Mr. Mayer answer it.

Mr. Mathewson: That was shown this morning in another instance exactly how he reached his total.

A. Yes, there is apparently a small difference.

45756 Q. What is the difference?

A. I make it $133,840, as against $105,056.

Q. Now, will you multiply the cubic feet by the 13 1/2 cents which you have adopted and see what it amounts to, or I mean multiply the number of cubic feet that you have found to be correct by 13 1/2 cents?

A. It will make the price $15,368.

Q. Instead of $20,807, as given by you?

A. Oh, no, that only refers to the superstructure and not to the foundation. There is another item for foundation and buildings and foundations for

water gas apparatus amounting to $30,732, in addition to that.

Q. That is not in Exhibit 370, is it, the generator house in East 39th Street?

Mr. Mathewson: The witness has testified that is—

The Witness: No, that is not here. It is just superstructure.

Q. Now, you see I am referring to Exhibit 370 and calling your particular attention to Item 2, generator house, 60 feet x 67 feet x 24 feet, six inches high, and where you give a cubical contents of 105,056 45758 cubic feet at 13 1/2 cents, and your total upon that calculation at $29,807, and I ask you is not that incorrect? You have, as I understand, found that your cubical feet are incorrect, and I am now asking whether your general results, the amount, is not incorrect?

A. No, the $29,807 includes the foundations that I referred to just now.

Q. Well, that don't appear in that exhibit.

A. They do not appear in that exhibit.

Mr. Burr: That is all.

Mr. Kirby: I will just state to Mr. Mathewson that I have been reading over his testimony, and 45759 in reference to the detailed estimate of that holder at 132nd Street I believe, as far as I am concerned, if Mr. Mathewson desires to put it in, I have no objection.

Mr. Mathewson: 132nd Street?

Mr. Kirby: The one you offered yesterday.

The Master: The hypothetical or typical estimate

Mr. Mathewson: Yes, very good. I do.

Mr. Burr: I object to it as not being proper and as incompetent.

The Master: You were to call my attention to something, Mr. Mathewson.

Mr. Mathewson: Yes, I will, but I think I would rather examine the witness on re-direct first, if it does not make any difference to the Master.

The Master: No difference.

Mr. Kirby: It is quite immaterial to me one way or the other.

RE-DIRECT EXAMINATION BY MR. MATHEWSON:

Q. Referring to this generator house at 99th Street
45761 which you value at $29,807 you have testified, as I understand it, that your valuation of that building includes both the building and the apparatus—the foundations of apparatus?

A. That is so in all instances. In all my valuations wherever there is an apparatus in a building the foundation is included.

Q. And that is true even though you do not specify it when you give the name of the house?

A. In every instance.

Q. So taking the cubical contents and multiplying by the cents per foot which represents the building with a normal foundation of only four feet the pro-
45762 duct would not give your total valuation, would it, in many cases?

A. No.

Q. And to that would have to be added the excess for the unusual foundations to get your total valuation?

A. That is right.

Q. And that is the explanation of any situation that may appear in these exhibits?

A. That is the case all through my entire valuation.

Q. Reference has been made to the supposed fact

that some paint appeared to be off the holder at 63rd Street or 65th Street. Would that indicate any physical deterioration in the holder if it were painted at reasonable intervals?

A. Not at all.

Q. Mr. Edgerton testifies on page 5324 of the record that on a visit to 23rd Street he had two gentlemen with him; he also says at another place that he was accompanied by a Mr. Woodward, and he subsequently states at page 5401 that he had two assistants to go over portions of the plant but does not state what portions they were. Assuming that Mr. 45764
Edgerton had two assistants at all times who assisted him continuously or even four assistants, would he and they have been able to your judgment, within the time at their disposal, to make an accurate estimate of the cost of the plant of the Consolidated Gas Company which they have appraised?

Mr. Burr: Objected to. I think that whole thing was traversed before. No use of bringing up the subject again. This is not re-direct examination.

The Master: It is re-direct examination, but it seems to me it is a question gone over so often it is not worth while spending any more time on 45765
it. Both sides have brought that question to my mind several times: that question of insufficient time in which to make the inspection.

Mr. Mathewson: That is the only question I have on that point, unless the Master thinks it is improper.

The Master: I do not think it is improper. I think it is all right for re-direct examination, but I think it is a little cumulative, that is all.

A. I am absolutely sure that the valuation within that time with any three or three dozen assistants could not have been accomplished.

Q. You were asked why you thought that Mr. Edgerton had not measured all these apparatuses and computed, and you stated for one reason that there was no time. Did the weights which Mr. Edgerton state for apparatus so far as he did state them indicate that he had examined them accurately and carefully?

A. Not at all.

Q. Now, Mr. Edgerton at page 4688 gave the weight of an iron tank on the roof of the boiler room at 14th Street at 72,348 pounds. What was the weight of that tank?

45767 Mr. Burr: This is not anything brought out by cross-examination, Mr. Master. This all should have been gone into on direct-examination of Mr. Mayer. It is opening up new sources for cross-examination, I submit. I think counsel should have exhausted himself on his direct-examination and his rebuttal.

Mr. Mathewson: He was directly asked why he thought Mr. Edgerton had not made measurements of this apparatus. Now, he says one reason was the weights that he gave where he specified apparatus, and I am asking in reference to these particular things.

45768 Mr. Kirby: But he should have testified to them on his direct-examination.

Question allowed. Exception.

A. 90,000 pounds.

Q. On page 5336 he mentions eight purifiers at 42nd Street and gave the weight as 443,544 pounds for the eight. What was the weight?

A. 675,720 pounds.

Q. At page 5342 he refers to the four holders, 280,000 pounds each at 42nd Street. He said the weight was 1,120,000 pounds. What was the weight?

A. 1,580,000 pounds.

Q. At page 5432 he gave the weight of four holders at the 44th Street station as 203,300 pounds. He gave the weight of the holders with their frames and connections in items totalling 1,373,200 pounds. What was the weight of all those?

A. 1,751,880 pounds.

Q. At page 5355 he gave the weight of two holders at 65th Street as totaling 2,124,000 pounds each. What was the weight of the two holders?

A. For the two together, 805,600 pounds.

Q. I don't think you have got the right place?

A. 65th Street. 45770

Q. Yes, there is the figure you made for your examination?

A. What size holders were those? Oh, those were the million foot holders?

Q. Yes, 2,124,000 each or 4,248,900 for the two?

A. The weight of one was 2,774,800 pounds and the other was 2,869,920 pounds.

Q. Including shell, guide frame and connections in each?

A. Yes, sir; a total for the two of 5,614,720.

Q. Did you observe any case where Mr. Edgerton gave the weights, where he gave the actual weights as you recall it, of apparatus or the holders? 45771

A. No.

Q. Now, I will ask you one general question in reference to Mr. Logan's testimony. Counsel for the complainant—

Mr. Kirby: This is certainly not re-direct examination.

Mr. Mathewson: I know it is not and I will recall the witness, if you put it that way, for a single question. I know this is not.

Q. Counsel for complainant gave Mr. Logan certain weights and asked him if he assumed those

weights whether the valuation would be equal to your valuation, Mr. Mayer, or asked those questions in substance. Were the weights which were given to Mr. Logan in those questions the actual weights that you had found?

A. That was right.

Mr. Mathewson: I can go over them all. I have them here, but I think it is easier in that way.

Q. In each case?

A. In each case.

45773 Q. Now, you were asked where you got the figure from which you made comparison with Mr. Edgerton's unit values of different material. Were they not the figures giving or purporting to give the details of valuation of the different buildings which were handed by defendants' counsel to me and delivered by me to you?

A. Yes.

Q. Did you use any other figures from any source but this in making the comparison?

A. I did not.

Q. In reference to piling; supposing you could get no information and had no drawings, but knew that

45774 the character of the soil was wet and swampy below a depth of three or four feet. Would it not be known to you as an engineer that you would have to put in pile foundations or other expensive foundations from that fact alone?

A. Absolutely, and I should certainly put in sufficient in a gas works because I know the danger arising from an insufficient amount of piling.

Q. In case a building is erected on an insufficient foundation in such soil it is not possible to put additional weight in the building is it, without putting in

a foundation which would mean the destruction of the building after the building is once built.

Objected to as calling for a conclusion, as the previous question did as all those questions do which commence, "It is not an impossibility," which Mr. Mathewson has so frequently used; and as incompetent, immaterial and irrelevant.

The Master: The question is undoubtedly objectionable as to form, Mr. Mathewson.

Q. If you desire to use a building to sustain a heavy weight in a gas plant located on such soil as is 45776
without pile foundations, would it be an expensive thing to reconstruct and put different foundations under the building after it is constructed?

Objected to as calling for a conclusion.

Question allowed. Exception.

A. No. It would be entirely too expensive to do it afterwards.

Q. Did you take into account the fact that a wall was leading at one of the stations and that there were truss girders in buildings to which attention was called in making your estimate of value.

A. I believe that was in 14th Street, either 14th or 21st Street, I am not quite sure about that. The 45777
walls were bulged very much and leaning, and that to my mind was an indication of an instance where an insufficient amount of piling had been used or else the piles were cut down at a point above the water line and had rotted.

Q. Did you find the wall had been buttressed or otherwise supported?

A. The insufficiency of the piling had been taken care of by buttressing and the trusses you referred to.

Q. Did the wall appear to be firm at the time you examined it?

A. Absolutely, with those additions.

Q. Your attention has been called to the fact that contractors sometimes submit estimates in reference to apparatus where it is desired. Did you take that into consideration in computing your ten per cent engineering cost to the company?

A. Well, that is not to be taken into consideration directly the ten per cent charged for general engineering cost, which the contractor submits in the way of a general proposal and has not the slightest bearing on the work that is to be performed by the gas company in designing and arranging a gas plant.

45779 Q. Is it general engineering and drawing of plans, grading, curbing, the storage and drain pipes and temporary fences and other things of that sort which go into the ten per cent which the company has to expend?

A. It is. I want to say right here that in some instances the grading amounts sometimes to digging away earth and often rock extending from fifteen to twenty feet above the surface before it is graded, and that sometimes goes over the entire surface of the building lot occupied by the gas works. A very large amount of earth under this condition was removed in the case of the new works at Astoria.

45780 Q. Mr. Marks has testified as defendants' counsel, has called your attention, that it is not customary for engineers in inventorying an existing plant to make an estimate of its value, to include ten per cent for engineering expenses; or five per cent, is that the fact?

A. I have to differ with Dr. Marks for the simple reason that it is expense which the Gas Company has got to go to in designing the plant.

Q. Your attention was called to the fact that bricks are a little lower at this time of the year than they are in the summer. How does the price of other

building material compare now with what it did last summer?

A. In a great many instances the cost of material is higher, particularly in the instance of lumber and also of steel. Steel plate alone went up in price since about the first of January, $8 a ton. Even with the bricks lower at this time of the year the cost of laying them would be considerably more than the difference in cost of the material or the total cost of $25, for the reason that the inclemency of the weather would not permit of laying brick at the same rate as in summer. 45782

Q. What rate of wages did you assume in your estimate of cost in New York City, I mean union rates or other rates?

A. Only union rates, for the reason that the work could not be executed and finished within the time required by the Gas Company to permit them of using the plant when they need it without union labor.

Q. Referring to the table of this 132nd Street building, respecting which counsel has examined you, I observe that it figures up $21,160, and there appeared to be masonry $1,370, concrete $480, and the various other items mentioned for that total amount, and the item after which the "etc." occurs is as follows: "$150, painting, etc.," isn't it? 45783

A. Yes.

Q. Would you as an engineer suppose that any great amount was included in this $150 for painting?

Mr Burr: Objected to.

The Master: It is hardly a question calling for expert opinion.

Mr. Mathewson: I thought not originally. I could not exactly understand the purpose of the examination. I offer these sheets in evidence.

Mr. Burr: I object to the introduction of these

because it is quite evident they are mainly pencil marks and incomplete data upon which some conclusion was reached by the witness Edgerton.

Mr. Mathewson: It shows the $21,000 at which he valued the plant very clearly.

Objection overruled. Exception.

The Master: It being understood they are allowed simply for the purpose of meeting so much of the cross-examination as related to the question of what was included under the item "etc.," and such length on the subject of this memoran-

45785 dum and I assume you offer it to meet them?

Mr. Mathewson: I do.

Mr. Burr: Then there is no objection to that item "etc." being marked in evidence, but here is a whole lot there that I don't know anything about.

The Master: It has no probative force except for the purpose for which it is admitted.

Mr. Mathewson: He testified respecting them before and I would be quite entitled to call for them and introduce them independently of any examination of this witness.

Mr. Burr: At this hour and at this time I

45786 think it is wholly improper, and I object to it as incompetent, irrelevant and not proper rebuttal.

Objection overruled. Exception.

Mr. Burr: Exception.

Mr. Kirby: Exception.

Received in evidence and marked Complainant's Exhibit 375.

Q. You were asked in respect to the shop Item No. 2, 21st Street as compared with the 132nd Street governor house, wasn't it?

A. Yes.

Q. And whether certain items in 132nd Street did not appear in the construction of the shop. On the other hand, is it a fact that certain features in the construction of a shop did not appear in the construction of the 132nd Street house?

A. It is impossible to make a comparison between the two buildings. They are so different in character and nature that no comparison is possible.

Q. When asked in reference to foundations you said that foundations must carry about three and one-half to four tons per foot. In addition to the weight of the purifier boxes and covers and the carriages generally the foundations have to carry the weight of the water in the seal and floors of the building? 45788

A. Yes.

Q. And the weight of the columns themselves, of course?

A. Yes.

Mr. Burr: I object to that as being improper, "of course" and assuming and telling the witness what they must do and what they must carry. This witness is entirely competent to tell what is the situation under the circumstances.

The Master: Do not lead him, Mr. Mathewson. 45789

Mr. Mathewson: I will try not to. Where he is asked if certain things are not carried, it seems to me that I am entitled to draw his attention to some things and ask if they are carried. It would seem to me so, at any rate.

Q. Now, you were also questioned as to certain buildings in 1884 which were appraised by Mr. Rowland and then as to your appraisal at present. Do you know what changes of construction or otherwise have been made in any building appraised by

Mr. Rowland in 1884 within the last twenty-two years?

A. I know that a great many changes have been made in all the buildings, but just what they consist of since Rowland's valuation of course I do not know.

Q. You know how many of them have had buttresses added, do you?

Mr. Burr: He has stated he does not know.

Mr. Mathewson: Yes, I know he has.

Q. Well, we will take eight sheds and which appear to have been valued by Rowland and now there appear
45791 to be five sheds and three purifier houses. Do purifier houses require any foundations and apparatus or otherwise or other things that you do not ordinarily find in sheds?

A. A great many.

Q. How about condenser houses?

A. The same there.

Q. Do you know how the conditions of any of the apparatus in 1884 compares with the condition at present?

A. I do not.

Q. Do you know how much has been spent on any item in replacement or repairs or renewals?

45792 A. No, I cannot tell you that.

Q. Is it possible for you to make any comparison without knowing all the details as to conditions then and exactly what the buildings contain and what their construction was as compared to the present?

Objected to as calling for a conclusion of the witness.

Question allowed. Exception.

A. It would be absolutely impossible for me to make a comparison unless I knew what was included in Mr. Rowland's valuation.

Q. Do you know in what buildings of Mr. Row-

land's he included any foundations of apparatus, if he included such foundations in any building?

A. I can tell you nothing at all about it.

Mr. Mathewson: Now, Mr. Master, I wish to renew this offer in evidence of Complainant's Exhibit 374 for identification. The testimony as I find it of Mr. Edgerton on page 5118 that there are many small and some large items that he is unable to calculate out on account of the number. He stated at page 5333 he had not figured the weight of six holders at 14th Street at all and based his estimate entirely upon their capacity. 45794
He stated at page 5336 that two other holders at 14th Street were figured on capacity and that he did not estimate separately for the guide frames. He stated that two holders at 65th Street were calculated on their cubic contents and he stated, page 5373, he did not compute the weight of apparatus, and from that its value in every case; he stated, page 5403, he took guide frames at 42nd Street at one-third the weight of the holder, and so on.

The Master: Now, as I understand it this exhibit that you offer amounts to this, that the witness says that no proper estimate can be made 45795
by the method that Mr. Edgerton has shown, that he used, and that the only proper sort of estimate is one going into details such as that typical exhibit that you offer.

Mr. Mathewson: Yes, and he also says in addition that it is impossible within the time which was at Mr. Edgerton's disposal to make such detailed estimates, all of which should be corroborated by an exhibition of the details required for even a single holder which this witness says does not require so much figuring as a good many other kinds of apparatus.

Mr. Burr: I do not quite understand this, not having had an opportunity to look over the numerous pages of which this document is composed—some thirty-six pages.

The Master: As I understand it, he says that is the way you ought to figure on the cost of a holder.

By Mr. Burr:

Q. Are these the various costs given here on this paper?

A. Only the weight. The costs are given in my
45797 testimony as to the cents per pound of its value in detail.

Q. This merely is a bill of material, is it not?

A. No, that is an estimate of the weight and of the various parts entering into the construction of the holder.

Mr. Mathewson: You will see at the end the statement of the number of feet total.

Mr. Burr: I notice here at the end, and that is why I base my objection against its introduction, that 5,180,980 multiplied by .67 cents per pound gives $347,125.66.

Q. For what particular plant or piece of machinery
45798 does that have reference?

A. To the 132nd Street holder. I stated yesterday those were the hypothetical dimensions of the 132nd Street holder.

Q. Then this is an estimate on the 132nd Street holder?

A. Of a holder of the same size. In this instance a little bit lighter.

Q. Does that purport to give the amounts paid for the various materials used in that holder?

A. Not at all. It is a detailed estimate upon which is based the final price at so many cents per pound, to

which I have testified in my testimony, and I will give you the figures in detail how the price of a pound was made up, and I can do it again now, if you want it.

Mr. Burr: I object to it as incompetent, immaterial and irrelevant.

The Master: Mr. Kirby's objection is withdrawn, do I understand?

Mr. Kirby: Yes, I do not care one way or the other whether it is in or not.

The Master: I will allow it.

Mr. Burr: Exception.

Received in evidence and marked Complainants' Exhibit 376. 45800

RE-CROSS EXAMINATION BY MR. KIRBY:

Q. You spoke with reference to the weight of a tank at one of the stations to which you gave a weight of 90,000 pounds. How did you get that weight?

A. I had taken the measurement of the tank and estimated the weight in detail from those dimensions.

Q. Did you make those measurements?

A. They were made under my direction.

Q. And if Mr. Edgerton made his measurements I assume that you would consider that the difference lay in the accuracy of one man's measurements over the other, would you not? 45801

A. They are in the accuracy of the measurements or the thickness of the metal or the calculations themselves; there are three chances of making error.

Q. I assume measurements made not only of dimensions but of thickness of metal?

A. Everything included.

Q. Have you the measurements of that tank?

A. No, not here. I had them all at the time I gave my testimony.

Q. Take the purifiers of the 42nd Street works to which you give a weight of 675,720 pounds. How would you get the weights of those purifiers?

A. Those purifiers were measured and then an estimate taken from those that I referred to as having been made during the last twenty-five years of the same size purifiers corresponding to the measurements of the boxes in this instance.

Q. So that if Mr. Edgerton had measured the size of the purifier, the thickness of the material would enter therein, and would have made his measurements and multiplications correctly; would he not have been apt to have come to a more correct result than this which you obtained by comparison.

45803 A. No, quite to the contrary. I am quite satisfied any results would have been incorrect. He is not familiar with the detail of construction and I am quite satisfied that he would probably leave out the detailed estimate at least 25 per cent of material that should be in it.

Q. How do you know that Mr. Edgerton is not familiar with the detailed construction of a purifier?

A. Because he has not constructed any to any large extent.

Q. Well, if he has constructed one, doesn't he know?

A. No, that is only a trial but not an experience upon which you can base the valuation of an apparatus.

45804 Q. I am not talking about valuation, sir. I am talking of size and how they are made?

A. Well?

Q. And if a man builds one doesn't he know as well as if he built a dozen?

A. No.

Q. Though they are all the same, as you state?

A. No, he doesn't know. He does not. Every time he builds one it is quite a problem to figure the calculation and the sizes therefrom and ascertain the proper thickness of the plates.

Q. And how do you estimate it, by comparison?

A. I have taken the same size of purifier, the same hypothetical dimension of a purifier, and I know that is absolutely right and fits the occasion.

Q. That is quite true—

A. There is no comparison about it. It is an absolute detailed estimate for that situation; no comparison.

Q. Now, therefore, if Mr. Edgerton measures the size and dimensions of the material going to make up those purifier boxes has he not the date upon which he can base his estimate?

A. I venture to say that if Mr. Edgerton would 45806
do so it would take him not less than a week to make an estimate of one set of purifiers, and then I do not believe he would have everything in there that belongs to it.

Q. Let us take your holder at 42nd Street. How did you get the weight of that holder?

The Master: If you are going on in this way we will adjourn now till 9:30 o'clock tomorrow morning.

Mr. Kirby: I do not desire to go into this. I would not have gone into it.

The Master: I am not complaining of you. You have a right to re-cross examine, but are 45807
apparently starting out now in a line of examination that will consume quite some time.

Mr. Kirby: It will, of necessity, not because I want to.

At 6:10 P. M. adjourned to Feburary 1st, 1907, at 9:30 A. M.

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

CONSOLIDATED GAS COMPANY OF NEW YORK,
Complainant,
vs.
JULIUS M. MAYER, as Attorney General of the State of New
45809 York, and others.

BEFORE ARTHUR H. MASTEN, Special Master.

New York, February 1, 1907.

Met pursuant to adjournment.

Present: THE MASTER, MR. MATHEWSON, MR. KIRBY and MR. BURR.

FREDERICK J. MAYER, resumed the stand and further testified:

CROSS-EXAMINATION BY MR. KIRBY CONTINUED:

45810 Q. Last evening you were speaking of the purifier boxes at 42nd Street, of which you gave the weight, as estimated by you, 675,720 pounds. I have before me the description of the apparatus for the 42nd Street station, furnished in the manner noted by Mr. Mathewson yesterday, and I ask you if the boxes, the description of which I now read, are those of which you gave the weights just mentioned?

Mr. Mathewson: Take your own memorandum and see if it is accurate, Mr. Mayer.

The Witness: Is that 42nd Street?

Mr. Kirby: Yes, the ones of which you gave the weight yesterday.

Q. I read from the description:

"Eight purifier boxes, 20 feet by 3 feet deep by 22 feet, 24-inch by 4-inch cups;

"Two layers of trays, connections and supports;

"Eight W. I. covers, 20 feet by 22 feet by 3 feet 6-inch boxes."

Is that the description which you used in making your calculation of weight?

A. That is right.

Q. Now, have you the details giving the size of the iron work going to make up those boxes?

A. No, I have not those details now; I did have 45812
them last summer at the time I made my valuation. This is 42nd Street. If I remember correctly, I built those boxes myself. I think in this instance they are likely to be the actual shipping weight. That was formerly the Metropolitan Company, and I believe I built those boxes myself.

Q. Are you prepared to state whether or not you took the sizes of the various materials going to make up these boxes from actual measurement of the same as the box appears, or from the drawings or specifications which you may have had in your possession, or obtained from some one?

A. The actual measurements were taken first by a 45813
man competent and familiar with the details of such boxes, under my direct supervision. Those measurements were then used in selecting the detailed estimate amongst thousands of estimates that fit these particular boxes, or boxes of the same dimensions. From those detailed estimates, which were made by myself or under my direct supervision within the last twenty-five years, the detailed weights were arrived at. All those details I had here last summer at the time I made my valuation.

Q. So that it was possible for your assistants to

measure the dimensions as set down here, and not only to measure their dimensions, but to measure the thickness of the material used in the construction of those boxes?

A. Yes, it was.

Q. Do I understand you to say that it would have been impossible for Mr. Edgerton to have made those measurements of thickness?

A. I say it would have been impossible for him to do that in every instance, in the fifty hours that he spent at the works.

45815 Q. I didn't ask you that. I asked you if as to those particular boxes, of which you have given the weights and to which you have made reference, it would have been impossible for Mr. Edgerton to have measured the thickness of the material?

A. No, not if he did not spend any time anywhere else except on those boxes; he might have measured that particular set of boxes, but not the other apparatus which he claims he did.

Q. You measured each purifier box in every plant?

A. Each and every one purifier box, and every other apparatus in each and every plant.

Q. And the thickness of the material going to make

45816 up each purifier box in each and every plant?

A. Where an apparatus was not enclosed it was measured; and where it was enclosed entirely you cannot measure it.

Q. You did not take, say, a purifier box of the same dimensions which might be at some other plant, and having applied a weight and value to the first purifier box which you measured, and, taking the thickness of the material, apply the same weight and measurements to the other one which was of the same size?

A. Not at all, Mr. Kirby. I just told you that these weights were selected from thousands of estimates pre-

pared within the last twenty-five years either by myself or under my supervision.

Q. Did it happen in any instance that this estimate that you selected was for more than one purifier box?

A. Yes, of course, if a purifier box is of the same dimensions it is applicable under the same conditions, and these estimates are correct in detail, for the simple reason that a cubic foot or a cubic inch of iron twenty-five years ago did not weigh any more than it does weigh today.

Q. But twenty-five years ago it might have been that they used more material in purifier boxes than 45818
they do today, might it not?

A. And that is taken care of by the detailed estimates which have been made, as I said before, by me or under my direction for the last twenty-five years, as compared with estimates made at a more recent date. I told you that it was selected from thousands of estimates.

Q. Quite so; a purifier box erected today might have an entirely different weight, though, from one that was erected twenty-five years ago?

A. It is possible, of course, depending upon the size and detail of construction, upon which I dwelt so forcibly last night before we left. 45819

Q. Do I understand you to say that it is your opinion that with all dimensions of a purifier box, together with the thickness of both the wrought and the cast iron, the width and depth of the cups, the width and the thickness of the flanges, the length and sizes of the T-iron supporting the covers, and the length, number and sizes of the T-iron supporting the trays, that it would have been impossible for Mr. Edgerton with his experience in the gas business, as it has been set down in this record, both in designing, constructing and operating works, to correctly calculate the weight of this purifier box?

A. If this purifier box was in use he had no chance to go inside of it and measure anything pertaining to the inside of it.

Mr. Mathewson: Supposing he had all those dimensions?

A. (Continuing) If he had all the dimensions and had not omitted any, he probably could make a correct estimate of the weight.

Q. How would he get the inside dimensions?

A. By going inside the box.

Q. Suppose the covers had been lifted?

45821 A. Then he had access to the interior of the box.

Q. Don't you know that the covers were lifted for him?

A. I do not, but I know from his estimate that he did not include the value of any trays or any supports for the trays.

Q. How do you know that?

A. Because it don't appear in his estimate.

Q. Have you seen the details of his estimate?

A. No, he has not shown it.

Q. Then how do you know?

A. Because he has not mentioned it. He has used so many cents per pound, and he cannot do that unless he has got sufficient practical knowledge to apply it.

45822 Q. Don't you consider that a man of his experience has practical enough knowledge to measure the dimensions of a purifier box?

A. I know he has not sufficient practical experience to include the cost of the trays and supports for the trays on a per pound price. It is only a practical man who has been long years in the business who has sufficient knowledge to know how such factors can be applied.

Q. And you do not consider that his experience in the business is sufficient for him to measure up the exterior and interior of a purifier box?

Mr. Mathewson: He did not say so.

A. That is not the question; that is not what I said. I said his practical experience is such what is not based upon any assumption, but upon my actual knowledge for a great many years, and I know he has not sufficient familiarity with the details of construction as would enable him to incorporate the values of trays and tray supports on a per pound price. He does not know how to apply it.

Q. Not if he had made a detailed examination of the interior?

A. No, it is a question of practical experience to 45824
apply such factors.

Q. Do you consider that a purifying box is a very complicated piece of apparatus?

A. Not to a constructing engineer. It might be to a man who occupies the standpoint of a buyer, for instance, but not to a constructing engineer. As a buyer he might buy the cheapest, but it would prove the most expensive in the end, because there would be so many omissions that would have to be furnished afterwards that the total cost would be the same as if he had accepted the highest prices submitted.

Q. But when you buy a purifying box you buy it complete, don't you?

45825

A. That depends on the specifications accompanying the bid. If you buy from irresponsibe people you will have to buy a lot of things afterwards.

Q. I call your attention to some diagrams set down upon pages 143, 144, 145 of "Newbiggings' Handbook for Practical Engineers," and I ask you if you will point out to me the complicated parts of a purifier box.

A. I have not stated that the construction of a purifier was complicated. I will say that it might be complicated to an inexperienced man such as a buyer,

but it is not complicated to a constructing engineer. And right here in this instance I want to say that there are no tray supports and no trays shown; as I said before, Mr. Edgerton omitted them in his estimate.

Q. Look at page 141, and I think you will see a section which shows the trays.

A. That is a different section from what you showed me. In this one it is included and in the other one it was omitted.

Q. I mentioned three pages and you failed to take notice of any but the first page.

45827 A. As I said before, Mr. Kirby, to the eye of a constructing engineer familiar with the details of construction of course it is apparent at once, but to the eye of an inexperienced man, such as a buyer, it is not.

Q. On page 141 is a section through a purifier box, is it not?

A. Yes.

Q. The horizontal lines there indicate trays, do they not?

A. Yes.

Q. Is there anything very complicated in that?

A. There is nothing complicated to me, anywhere,

45828 in any of those places.

Q. On page 144 I show you another section which is the box with the tray left out, and the carrying carriage and the hoist by which the box is lifted. I ask you if there is anything very complicated in that.

A. Now, as to that, when you get right down to the point of detail of construction there is more complication in this little picture than it appears to possess, to the eye of a man that don't know.

Q. I can believe that.

A. I venture to say right now that Mr. Edgerton does not know how large to make the bottom plate,

just one bottom plate of a purifier, so as to take care of the cooling strains that exist in the process of cooling in the mould, which enter into consideration as a factor to resist pressure. That is a complication that he does not know.

Q. Don't the pattern makers have a scale which allows for contraction and expansion?

A. You do not understand my remarks. I am talking about shrinkage strains which occur in the casting, [illegible] process of cooling in the mould.

Mr. Mathewson: Not the reduction of the size? 45830

A. (Continuing) the pattern maker does not know that; he has nothing to do with that. It is a question for the constructing engineer to decide that.

Q. Then there is no method of measuring the thickness of that bottom plate?

A. A method of measuring it? Certainly you can measure anything that is accessible. In connection with my remarks I want to add that the cooling strains have to be taken care of, in the dimensioning and sizing of the plate, and the rubbing and the thickness of the plates, to prevent its cracking when in operation. It is a well known fact that bottom plates in purifiers have cracked from apparently unaccountable causes. 45831 If you take our purifier bottoms you will find that there are no cracks. This is attributable to these details which appear to you as being not in existence.

Q. No; this being what you designate now as your purifier box, I presume it would have all those strengthening materials that you mentioned?

A. Yes, it would.

Q. And one who had an opportunity to examine should observe that in his examination, should he not.

A. If they were there, yes, he should find them.

Q. And if they were not there they ought not naturally to be included in the estimate of the value of the box?

A. Certainly not.

Q. I ask if you consider that these figures with the dimensions are such as will set down upon the box?

Mr. Mathewson: The dimensions of the covers?

Mr. Kirby: 8 wrought-iron covers, 20 x 22 x inch 24-inch a 4-inch cups, etc.

A. There is always an allowance for a variation of
45833 the cups around the boxes, and in designating the size of the cover, you always refer to the size of the box. It is common with all constructing engineers.

Q. If Mr. Edgerton in making measurements ascertains that the covers were of greater dimensions than set down here, and so calculated them he would not be in error, would he?

A. That is not in error in either direction. The covers for 4-inch cups are always 5 inches larger in each direction than the box, and the size of the covers always refers to the size of the box.

Q. So that the dimensions given here for covers are not in fact the true dimensions?

45834 A. Yes, they are because the constructing engineer always adds half the size of the cup for the cover.

Q. But the weight of material in these covers, you would have to use larger dimensions than are set down in this schedule, would you not?

A. No, for the constructing engineer handling it, knows just exactly how to apply that difference, which I do in every instance. Besides I think you will find the covers for boxes. I think you will find it reads. It does not say eight covers so and so big.

Q. And such covers would be larger in size than the boxes?

A. Yes, by five inches—half the width of the cup.

Q. So that taking their dimensions you do not think it would be correct rather than taking the dimensions as set down.

A. I did not set down the dimensions of the cover. I said the covers for such size boxes.

Q. If you will listen until I have finished my question you will not be led into error?

A. You asked about the size of the cover given there. I did not give the size of the cover. I gave the size of cover for such size boxes.

Mr. Mathewson: This inventory was made by you for your own purpose, was it not? 45836

The Witness: Certainly.

Mr. Mathewson: Not to be delivered to anybody else?

The Witness: Certainly not, every constructing engineer of gas works knows how to apply such dimensions.

Q. Have you the details of the foundations under those purifier boxes?

A. No, I haven't got them now, I had them all last summer.

Q. The foundation as indicated in Newbiggings'—can you give a general idea? 45837

A. Not at all; foundations in every instance would differ from those under other conditions.

Q. I am asking you how this condition at 42nd Street compares with that down here?

A. Not at all; that is merely an assumption. That is based upon nothing; it is a sketch.

Q. I want you to tell me, inasmuch as you have not your details here, how the foundations are situated at 42nd Street?

A. They are piled.

Q. The foundations are piled, and the supports for the purifying boxes?

A. They are piled.

Q. Piled below the foundations?

A. Below the column foundations.

Q. They come up to the columns?

A. Yes.

Q. Are the columns in any way similar to this sketch?

A. Well, a column is a column, and there is not a great deal of variance in the appearance of a cast iron

45839 column; they look pretty near all alike.

Q. And the columns as placed under the purifying boxes, disregarding the question of piling, are similarly placed in this sketch to what they are in 42nd Street?

A. Not at all; it has got no bearing upon that at all, on 42nd Street, and it does not admit of any comparison.

Q. Are there more columns?

A. Mr. Kirby, it is impossible to say that offhand, by comparing it with a sketch and a book which does not refer to any particular job at all.

Q. I am very anxious to get the truth, and you have not your details here?

45840 A. If I had my details here I would not be able to tell you that. I would have to have the plan of the building to find that out.

Q. You haven't that plan, have you?

A. Not now. I have not. It is a well known fact that in modern construction the number of columns is reduced to a minimum, and in fact I have executed a great many constructions without any columns. Instead of using them, I have put the weight in the supporting girders, which extend from side wall to side wall of the building.

Q. You do not remember how many columns there are under these purifying boxes, if any, do you?

A. No, I couldn't tell you that now.

Q. Now, you spoke of the bulging of the walls of the building at 14th Street? Does this bulging show a settlement of the walls?

A. It absolutely indicates it.

Q. Now, if those walls settled, why is it that the piping running from that building or into it was not broken?

A. I did not say it was not broken; it might have been broken and repaired. 45842

Q. If a wall settled in that way does it break the pipes entering or leaving the building?

A. It undoubtedly would if there was sufficient settlement. I have known that to occur in many instances.

Q. Would a most minute settlement, say 1/16 of an inch?

A. It depends on limit of elasticity of the pipe connections as to how long it would be before the fracture would occur.

Q. Are pipes running in and out of buildings in gas works so placed that they will be able to compensate for a slight settling? 45843

A. They are.

Q. And in running through walls, is it not the custom to leave a small space around so that a settlement or variance in the relative position of the wall, if small, will not disturb the pipe?

A. That is true.

Q. You have placed in evidence Complainants' Exhibit 376, detailed estimated weights of 5,000,000 cubic feet holder and stated that the details set down in this exhibit are necessary to be obtained in calculating the weight, and from the weight the value of a gas holder. Is that correct?

45844 Frederick J. Mayer, Re-cross.

A. That is right.

Q. Now, does this detail include not only the tanks proper and the framing, but also any internal framing which may be in the holder?

A. Everything and anything belonging to that holder from beginning to end and from start to finish.

Q. Am I right in assuming that some of these articles set down under the heading "Flange steel" are for the interior framing of the holder, or if not, will you point out to me such material?

A. Yes, in this instance it is. It belongs to the
45845 vertical stiffeners of the second section.

Q. And there is distributed throughout the schedule all the material which there is in any of the holders?

A. Yes, the entire material is set down from beginning to end of construction.

Q. Will you tell me which holders of the Consolidated Gas Company you have the same details for as are set down in this Exhibit No. 377?

A. I cannot tell you from memory, but a large majority; within the last six or eight years nobody but Bartlett, Hayward & Company has built any holders in New York or Brooklyn.

Q. Outside of the holders erected within the last
45846 six or eight years?

A. A great many estimates of the other holders, yes, just how many I cannot tell you.

Q. Let us take up the holders of the various stations? Have you the details of construction of the holder at 132nd Street?

A. That is the one (indicating) or one of the same size.

Q. By that you mean the estimate set down in Complainants' Exhibit No. 379?

A. Yes, sir.

Q. And the holders at 65th Street?

Mr. Mathewson: You mean has he identified the 65th Street?

Mr. Kirby: Yes.

A. Yes, I believe I built the 65th Street holders.

Q. In coming to your appraisal of that holder, you prepared a schedule such as this?

A. I took my weights from such a detailed estimate such as that.

Q. And did you do the same thing with the holders at 65th Street?

A. Yes, I did, I built those.

Q. Did you take the weights in the same way of 45848
the holders at 44th Street.

A. In every instance.

Q. And at 42nd Street?

A. In every instance. I built the four holders at 42nd Street.

Q. And 18th Street?

A. There are only two holders. Yes, they were taken from detailed estimates.

Q. When were those 18th Street holders erected?

A. I do not remember, but it was a good many years ago.

Q. And from what source did you get the detailed estimate?

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A. The same source as I got that.

Q. From the builders?

A. From my own estimates made within the last twenty-five or thirty years, of the same size holders.

Q. Then, it was not for the identical holder there today?

A. If the dimensions agreed with those, or my detailed estimate, it is the identical holder. As I said before, it did not make any difference whether it was made twenty-five years ago or made today.

Q. Is it not a fact that you can take an estimate

for holders of exactly the same size and same capacity, and that then when erected one will weigh more or less than the other?

A. Slightly, due to the difference between the weight of the purchase weight of the material and the actual shipping weight after the material has been manufactured. That difference varies from—well, it amounts to about 3 1/2 per cent.

Q. So that the holders which you did not have the actual details of and of which you took the details by comparison, might differ by that percentage?

45851 A. No, that percentage is a difference which exists in all holders. Where I did not have the details in my estimate I made new details for such conditions.

Q. How could you make new details if you did not know the construction of the holders?

A. I could see the construction of the holder. I took the pressure of the holder, for the weight of the holder, and then I measured the details for the guide frame.

Q. Did that carry out the statement which you have made in connection with the details of construction of the holder? When you took the pressure of it did that give you the internal framing?

45852 A. No, sir.

Q. You did not know the details then?

A. In this instance, no; the weight of the holder was estimated by pressure, but I say in most instances I had detailed estimates and did not have to take the pressure.

Q. How is that about 18th Street, do you remember?

A. No, I cannot recall that.

Q. How is it in regard to 14th Street?

A. In 14th Street I believe I took the pressure, but I would not be sure about that, there are so many

estimates; it is impossible for me to remember that, when I made that about seven months ago, in all this multitude of figures.

Q. How about 23rd Street?

A. What I said about one applies to all. Wherever I had a detailed estimate of the exact holder, which was the case in a great many instances, I took that detailed estimate. Where that was not the case I did make estimates from such weights and measurements as I was able to obtain.

Q. And what weights and measurements were you able to obtain, and in what way did you obtain them? 45854

A. By sending my men there and going there myself, and by directing them how to take the measurements and telling them what measurements I wanted. When they reported to me I telephoned to Baltimore to find whether they had an estimate to cover that situation.

Q. Did you measure the height of the guide frame and the thickness of the material entering into it?

A. Everything.

Q. Did you take the pressure on the holder?

A. Everything.

Q. And from those dimensions and from that pressure you calculated the weight of that holder, and your guide frame? 45855

A. And compared it for verification with the estimate in existence at Bartlett, Hayward & Company's office, which estimates were made under my direction for the last twenty-five years, in order to be sure that my calculations were correct.

Q. And to that weight you applied a unit figure which you had previously determined upon and which you have spoken of in your direct testimony?

A. Yes.

Q. Yesterday you mentioned certain sheets, some of which you had examined and some of which you had not examined, which sheets are those furnished by me to counsel for complainant?

Mr. Mathewson: I did not ask him on re-direct about any of them, nothing at all.

Mr. Kirby: It was on re-direct that you offered one.

Mr. Mathewson: No, I merely asked for 132nd Street, which had already been testified to. I asked for it at the end of the case and I offered

45857 it, but it had no relation to his examination, and I shall object to going into this question, as I think it is a consumption of time.

Mr. Kirby: The consumption of time will consist in offering all those sheets in evidence. I simply want to identify them.

Mr. Mathewson: I don't know how you can offer them in evidence, your case being closed. I think you should have offered them before, and I shall not consent to that. That may mean days of further examination by me of witnesses, and going over them.

Mr. Kirby: I will make the offer and then

45858 make my argument.

Q. I show you a statement headed 14th Street station, a lot of yellow sheets upon which there are certain writings, figures and dimensions and what not. I show you the same thing in an envelope headed 42nd Street plant, 44th Street plant, 18th Street plant, 21st Street station, 163rd Street station, 190th Street station and 111th Street station; also Inwood station. I ask you if these are not the envelopes and the contents thereof which you make reference in your testimony as having been looked over in part by you, and from which envelope headed 132nd Street sta-

tion the entries have not been taken out, but were yesterday placed in evidence in this case by Mr. Mathewson?

A. I am absolutely unable to tell. I had such envelopes but I cannot tell whether they are in the same condition as when I had them, because my reference yesterday to omissions and errors may have been corrected since that for all I know. I cannot tell whether they are the same papers or not.

Mr. Mathewson: You did not examine them anyway, did you?

The Witness: No, the space of time was entirely too short; I could not do that and I could not tell whether they are the same papers or not. 45860

Q. You made such a close examination of them that you are not able to tell whether they are?

A. I said yesterday that the time was too short, but in that time those that I did examine I found that they were so full of errors and omissions that I took it for granted that they were all on the same basis and were of no value.

Mr. Kirby: By reason of the statement of the witness, and more particularly by reason of the fact that yesterday Mr. Mathewson placed in evidence over our objection these sheets for the 132nd Street station, I here offer, so that instead of having a part of what is a complete statement, which may be worth much or little, we may have it complete, the sheets for the other stations. I call attention to the fact that on page 5385 of the testimony, being the testimony for January 9th, a statement was made by me in reference to these sheets, as follows: 45861

(Here Mr. Kirby quotes from the record at the page mentioned, which was ordered not to be spread upon the record.)

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Mr. Kirby: I was prepared to offer all of these statements at that time, and acting upon the suggestion of the Master I had them marked for identification. Now, I contend it is improper to place in evidence here as an exhibit any of these exhibits without placing them all in. As I stated at that time, and I inferred yesterday, they are nothing but memoranda subject to the explanation of the man who made them, and without such explanation, as I then stated, can have but very little value. Having been taken advantage of in any one instance by the complainant I certainly consider that the others should go in and that that should be stricken out as an exhibit; either that, or else they should all go in together.

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Mr. Mathewson: Mr. Kirby entirely misconceives the situation. The only papers which I offered were the details in reference to the 132nd Street station and no other station. Now, if Mr. Kirby will refer to the record he will see that I took these very sheets when Mr. Edgerton was on the stand, and asked Mr. Edgerton as to every one of the details making up the $21,160, and I asked him whether he had included profit in the first item, the cost of brick, or whatever it was. No, he had not. I asked him whether he had included profit in the cost of carriage, and he said he had or had not. I said, "Take up the cement floors, $520." He answered, "I can shorten that by saying that the contractor's profit, so far as my information goes, will be included only in the brick work and he will save that concrete work."

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Now, I have simply offered these sheets in order that being printed, it may be intelligible to the Court that the figures with which I was dealing, and the sheets upon which I was examining the witness, were in reference to that particular station; nothing more and nothing less.

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Of course, if any paper were produced by the defendant which would tend to rebut the accuracy of the defendants' testimony, as that paper would, showing that he had not included any profit in the purchase of his brick or other material, it would be quite pertinent for me, he having presented it, to offer it as the very last thing in my case, with no witness on the stand at all. It is marked for identification, and if these papers were desired to be offered as to the other stations by the counsel for defendants at that time, and they had been admitted, my witness would then have examined those particular papers as to those other 45866
stations and would have been prepared to testify to their correctness or incorrectness, no matter what time it might take; but to put them in now after their case is closed merely because I offered papers which have been referred to in the examination of the witness and gone over in detail as to the 132nd Street station, would simply put me back where I would have to take up these papers and spend days on them in examination to perhaps rebut them. It seems to me perfectly clear that it is most competent for me to offer that paper and incompetent for defendants' counsel at this stage to offer these other papers respecting 45867
which I have said nothing. I will say this that if the counsel have any question about it, this can be marked for identification and printed. I would be just as willing to have it marked for identification as anything else.

The Master: Where is the place this was offered in evidence?

Mr. Burr: It is in yesterday's proceedings which have not been printed yet.

The Master: I remember pretty well what took place.

45868 Mr. Kirby: The whole testimony carries an entirely wrong inference.

The Master: I will exclude these and give you an exception.

Mr. Kirby: Then I here move to strike out the exhibit which was admitted yesterday, on the ground that it is improperly admitted unless all are placed in evidence.

Mr. Mathewson: I am perfectly willing to have this printed so it can be referred to as a part of this record, as an exhibit for identification for that purpose, if you wish.

45869 The Master: That probably answers the purpose.

Mr. Kirby: No, I want to have them all to have the same strength in the case. I do not want in the case an exhibit which has no right there unless it is connected with all the other sheets for the other stations.

The Master: Do you imagine the Appellate Court is going to spend any time looking over these details?

Mr. Kirby: They will on an exhibit in the case.

Mr. Mathewson: If you will give me time to re-
45870 lay these papers and go over them and give testimony in regard to them, I would have no objection to their going in.

The Master: I have disposed of the matter. I think the suggestion made by Mr. Mathewson, that they should be printed, the expense of that coming out of his client, in part, covers the whole thing. If there is any error in excluding them you will get the benefit of that.

Mr. Kirby: They are marked for identification. I do not care whether they are printed or

not. They are always subject to our use, marked for identification.

The Master: But the Supreme Court will not pay any attention to them unless they are in the record.

Mr. Mathewson: I am perfectly willing to have the paper I offered yesterday printed as an exhibit for identification for reference, to make this intelligible in the testimony, instead of being offered as an evidence as proof of anything.

The Master: That answers your question, Mr. Kirby.

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Mr. Mathewson: But I cannot consent to printing all of these other papers.

The Master: Very well, we are all in harmony.

Mr. Kirby: So that there may be no controversy about tampering, such as Mr. Mayer suggested, in regard to these schedules, I would like to have them marked in some way.

The Master: They have already been marked.

RE-DIRECT EXAMINATION BY MR. MATHEWSON:

Q. Did you have all the details of computation at hand when you were called to testify last summer, when you were examined here?

A. I had, and I was continuously telephoning to 45873
Baltimore, and even taking trips to Baltimore twice a week, sometimes taking the night train and coming back the next night.

Q. Bartlett, Hayward & Company are the custodians of these, are they?

A. Yes.

Q. And they are in Baltimore?

A. Yes.

Q. And since last summer you have moved your office and cleaned up generally?

A. Both my Baltimore and New York offices were moved since then.

Q. Do I understand in reference to a holder which you did not build, that after taking measurements of the holder, for instance, or other apparatus, you then went to Bartlett, Hayward & Company's estimates to see if they had built a holder or other apparatus of these dimensions?

A. Yes.

Q. And if you found that, you took that weight?

A. I did.

45875 Q. And if you did not?

A. Where they differed from the dimensions taken actually in buildings, then the weights were estimated in detail.

By Mr. Burr:

Q. Where is your office now?

A. My New York office, in Park Row Building. My Baltimore office is in the Keyser Building.

Mr. Chambers: Does the complainant rest? I ask the Master to ask complainant if they rest.

The Master: The Master will make inquiries as he deems it necessary. Is there anything else on the surrebuttal?

45876 Mr. Chambers: I move to dismiss on all the grounds I urged before at the close of their rebuttal.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Is there anything else?

Mr. O'Brien: I have nothing further except Mr. Edgerton. There are a few matters that I would like to clear up.

Mr. Ransom: With respect to the tabulations of candle power made up by Mr. Birdsley, purporting to be tabulations of the sworn reports,

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we find errors in those as compared with the sworn reports, which we have had for the purposes of comparison. That of course may be due to the fact that these tabulations were incorrectly copied from the books in the office of Mr. Birdsley's department, or that the books have been incorrectly copied from the sworn reports. If Major Clark is willing to agree that in any instance to which I call attention, the tabulations shall be corrected to conform to the sworn reports which are in evidence, I do not think we will have any difficulty about it.

Mr. Clark: Yes, I just want to have them represent the facts, that is all. 45878

The Master: There ought to be no trouble about that. You can get that in shape probably before the time we get to summing up.

Mr. O'Brien: There are some motions I wanted to make for extensions—

The Master: Mr. O'Biren, as I understand it, with the clearing up of the points that Major Clark wants about the retirement of property, and the additional evidence that you want to put in by Mr. Edgerton, the entire case will be in, so far as any counsel is prepared to put in any more. I get the impression from what you said, 45879 that you want to make an application to keep the case open for a period of time. Is that correct?

Mr. O'Brien: Yes, your Honor, I request at this time that three weeks further be granted to the defendants, at least three weeks, to properly prepare what further evidence they see fit to offer in this case. I have already spoken about that, I think it was two or three days ago. I reiterate now what I said then, in reference to the methods adopted by the company in the matter of exam-

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ing their books; the stress under which we have worked during the trial under your Honor's rulings; the length of time, the hours daily put in in the trial of the case; the inability thereby to give proper time and study and attention to our case, the preparation of it; proper time for conferences with witnesses; proper time for going into the mass of details that must be taken of in adequately presenting the defendants' case. As to all these matters, matters and things that I have alluded to during the course of the trial, I feel that full justice could not be done without going further into these matters. Here is a point

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in connection with that, which is only one of the many things I have in mind that I think has not been taken care of in the case, and that is the examination of the books of the affiliated companies wherever they are necessary to sustain and support the expenditures that have been made in connection with these affiliated companies.

The Master: Answering what you have just said, Mr. O'Brien, this is the 3rd of March. It looks as if we would be entirely through with taking proof tonight. I will then, if all the proof is in that anybody is prepared to offer, declare

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the case closed. I shall then set Monday morning, March 22nd, which is about three weeks from now—

Mr. Chambers: Two weeks and two days.

The Master: Well, two weeks and a half from now, for summing up. This case will stand adjourned for the purpose of motions to strike out, and any other motions that may be made, and the summing up, until Monday, March 22nd. I think that this case has been about as exhaustively tried an any case that was ever brought in any court of justice.

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Mr. O'Brien: "Exhaustively" is a well selected word. "Exhaustingly" would be better.

The Master: I think the three counsels representing the three defendants have presented every possible view that they could find or think about, or that their experts could give them as bearing upon the right of this complainant to relief in this case.

If between now and the 22nd of March either one of the counsel finds anything that he believes will be in the interest of justice as bearing upon matters that have been covered in this case, without starting anew, and taking up matters that have 45884
occurred since the 1st of November, as to which period I have ruled out testimony offered by the complainant without their asking to reopen the case—in others words, if there are any corrections to be made, anything to be cleared up as to what is in the record, or if there is any essential fact that has been misstated or misrepresented. I am going to hear the claim, and if I believe that it is at all useful I am going to take it.

Mr. Ransom: I suppose that is reserved to all counsel?

The Master: That is reserved to everybody. I want this record to go up feeling that no coun- 45885
sel has overlooked something that ought to be pointed out in the record. That being so, I do not believe that anybody's rights is going to be endangered because I do not grant any more adjournments. The real reason why I do not give any more adjournment is that defendants' counsel and experts have been on the books of the complainant company and of the Astoria Company more or less for a great many months. This case has been on trial before me practically all the time from the 15th of July, and it has got to be finished.

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Mr. O'Brien: Will your Honor state on the record right here in connection with that oft repeated statement as to the defendants' representatives being on these books, that for a period of well nigh five months the general books of the complainant company were in court.

The Master: No, I can't say that.

Mr. Ransom: That is not true.

Mr. O'Brien: Well, give your judgment as to the length of time. It may range from three and a half to five months.

The Master: No, there was no such time.

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Mr. O'Brien: An examination of the record would indicate—

Mr. Ransom: Some of them were here some time.

Mr. O'Brien: They were here until Mr. Teele got through all his testimony and through all his cross-examination, and the cross-examination of Mr. Teele alone was not finished until the last week in November.

Mr. Ransom: I will wager that all the books to which you refer have not been here a total of 45 days.

The Master: It is impossible for the Master to fix any number of days.

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Mr. O'Brien: They were here at least during July, August, September, October and November. The cross-examination of Mr. Teele was not over until the last week in November.

Mr. Ransom: But there wasn't anything except the 1919 books here at the start.

Mr. O'Brien: I won't say any more about it, I am not going to quibble. They were in court a great deal of the time.

Mr. Ransom: The record will show.

Mr. O'Brien: And there were two rooms, about

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14 by 10, set apart for the various representatives of the defendants to work in, and they could not get a book or paper or record until they entered into a long conversation with Mr. Davidson. The whole thing was a subterfuge, and was an evasion, and it was not frank disclosure. I was there often enough to see what went on. They may think it was slick work, but it was work that will never succeed in this case. The evidence of what they did to Mr. Edgerton is an instance of their frank disclosure.

Mr. Chambers: I want to protest against the Master's statement that the defendant I repre- 45890
sent has had a great many months to examine the books of the company. The truth of the matter is that certain papers and documents were handed to us, and we were led to believe that they were going to try their case on a certain theory, a reasonable inference to be drawn from the papers that were submitted to us, led us to believe that. We spent months preparing data and information which was never used, because the theory of the complainant was shifted from time to time, and consequently a good deal of our work was naught, because of the manner in which the complainant presented its case. I feel that we 45891
have never had, and have not to this day had a fair opportunity to examine their books and records.

I protest against summing up this case on the 22nd day of March. I think the 22nd day of April or the 22nd day of May would be more like it, because I am satisfied that I will not be able to do it in that length of time. You could not sit down and any more than read the record in that time.

Mr. Clark: I would like to state in connection

45892 with the time that we have had to look at these books and work on the books, the representatives of the Public Service Commission have been at Gas Company ever since last June. Owing to the fact that the books were in court, and delays in obtaining the data which they desired, it was not possible for the representatives of the Commission to obtain data which they desired except for the year 1918, and they did not, and they were not able to make an examination of the books and records for the years from 1906 to 1917, or for the year 1919.

45893 Mr. Ransom: All books were offered to the defendants in February, 1919. The fact that they did not take advantage of that until the 7th or 8th of June was their own fault.

Mr. Chambers: I will say right here now that I proposed to put in evidence tabulations of the cost of making and producing gas from 1906 to 1917, inclusive, but we have not had the time to do it. That is a part of our proof.

The Master: How about this Major Clark matter.

Mr. O'Brien: I except to your Honor's ruling requiring that this case be closed on March 22nd.

45894 The Master: No, it is closed tonight.

Mr. O'Brien: Well, closed tonight, subject to permission to supply something.

The Master: No, I didn't say that. I said the opportunity to make an application to supply matters that you may think are wanting, and that I may conclude are useful in the case.

Mr. O'Brien: I take an exception to the direction and limitations placed upon our trial of the case by the Master, and I renew the request that I made early in the case that they produce for cross-examination the superintendents and their

45895

assistants of the branch offices; W. Cullen Morris, the head of the utilization bureau; Colin C. Simpson, Jr.; Mr. De Castro, the superintendent of the 99th Street station; the gentleman under him who makes photometric tests; the clerk of the works who makes up reports from which reports are sent into the head office; the gentleman in charge of the Astoria station, Mr. Lawrence or his subassistants; the gentleman in the works at Astoria, who has charge of the records there, and who makes up the records that are sent in as to all matters, or such matters as are covered by reports to the main office; the head of the chem- 45896
ical division; the heads of the testing stations of the complainant company; the production of the stock books; the production of the Executive Committee meetings covering such matters as are not covered by the experts already in; the representatives of the companies that are doing business with this company; the contractors who put up the properties, the alleged values of which have been put in evidence in various ways, particularly with reference to the Astoria Company

That will outline some of the men that ought to be produced here for cross-examination as to underlying data. I request that they be produced 45897
on the day set for the resumption of this trial.

The Master: There will not be any resumption of the trial.

Mr. O'Brien: Well, call it by any other name your Honor wants. We are going to meet again.

Mr. Ransom: On these matters with Major Clark, I think we can put in the record what represents the points that he wants, first as to the journal entry in folio 49 of the 1907 journal, the withdrawal of $1,000, which appears as withdrawn in March, 1907, on Mr. Carter's exhibit.

45898

The complainant states that on December 31, 1904, there was dismantled at the 21st Street station—

Mr. Clark: Why don't you read the journal entry as it stands?

The Master: Is your memorandum a copy of the journal entry?

Mr. Clark: Yes.

The Master: I think that is fair, the journal entry should be read in.

Mr. Ransom: Folio 49 of the 1907 operating journal reads as follows:

45899

"At Dec. 31st, 1904, there was dismantled at the 21st St. station two engines and one blower, which apparatus has since remained there for final disposition. At that time detail papers were made out showing that we retained in our accounts the amount of $2,377.00 covering this apparatus. On this value it is estimated that the engines have a value of $1,000 each and the blower a valve of $377."

The second withdrawal on the books of December, 1907, referred to in Mr. Carter's exhibit, $155,195.63, relates to plant and apparatus located at Avenue A and 63rd Street, dismantled in 1905, 1906, 1907. The entry on folio 273 of the

45900

1917 operating journal reads:

"For the original cost of sundry plant and apparatus which was located at Avenue A, First Ave., 62nd St. and 63rd St., dismantled during the years 1905, 1906, and 1907. The land in which said plant was located was sold to the Standard Gas Light Co. in 1905. Apparatus has been dismantled and sold for scrap."

Mr. Clark: Is that the end of the journal entry?

Mr. Ransom: That is the end of the journal

45901

entry. The next withdrawal is an amount of $467.24, retired on the books in December, 1912, shown on Mr. Carter's Exhibit 472.

The explanation of the journal entry in folio 435 of 1912 operating journal, reads:

"For the original cost of a 500 H. P. Kelly Berryman Feed Water Heater installed during the year 1898 and dismantled during Feb., 1908. This heater has been carried in stock until December, 1912, when it was sold."

The next one is November, 1918, retirement of $570, which is also shown, I take it, on Mr. Carter's exhibit in connection with that date.

45902

The explanation for journal entry No. 1001 in folio 365 of operating journal, 1918, reads:

"For the original cost of a boiler stack dismantled at 111th St. station in 1917, as per letter dated May 7th, 1918, from engineer of construction, on file."

The next one is the retirement in May, 1914, in the amount of $6,723, shown on Mr. Carter's Exhibit 472.

The explanation for journal entry in folio 156 of the operating journal, 1914, reads:

"For the original cost of the boiler house and yard and sheds, together with boilers and fixtures, and the original cost of coal yard #5, including fence and floor, located on the block between 19th and 20th Streets on 11th Avenue, demolished during 1893 to make way for the construction of the 3,000,000 cu. ft. holder erected on the plot, not heretofore written out of the accounts."

45903

The next one is May, 1914, $313, shown on Mr. Carter's Exhibit 472, as has already been testified to at length and in full in this case, at page 7981. The explanation for the journal entry on folio 156 of 1914, operating journal, reads:

45904 "For the amount of certain expenditures during 1903 in connection with the construction of the 3,000,000 cu. ft. holder erected on the block between 19th and 20th Streets on 11th Avenue. This item was inadvertently omitted from entry recorded in May, 1910, accounts, covering settlement with the City of New York for the property which was taken under condemnation proceedings for the purpose of marginal street."

The next item is one of $2,000 retired in December, 1916, shown on Mr. Carter's exhibit in that connection. The explanation of journal entry in folio 57 of 1916 operating journal, reads:

45905 "For the original cost of McKenzie Exhauster #2 dismantled during 1914, and sold as scrap during October, 1916, as per report from the engineer of construction on file."

The next item is a withdrawal in the sum of $5,000 retired in December, 1916, shown on Mr. Carter's exhibit. The explanation for journal entry in folio 457 of 1916 operating journal, reads:

"For the original cost of McKenzie Exhauster #3 at the 42nd St. station dismantled during the year 1905 and sold as scrap during 1916, as per report from the engineer of construction on file."

45906 The last item is one of $6,162.76, December, 1916, shown on Mr. Carter's exhibit in that month and year. The explanation for journal entry in folio 457 of 1916 operating journal, reads:

"For the original cost of 2-60 H. P. Scotch Marine boilers with steel stacks disconnected at the W. 65th St. station during 1914 and scrapped during the year 1916, as per report from the engineer of construction, on file."

Mr. Clark: I have that word "dismantled" instead of "disconnected."

Mr. Ransom: I am informed that the journal entry reads, "disconnected."

The Master: As to this last item it will be noted that Major Clark's memorandum has the word "dismantled" and Mr. Ransom's memorandum has "disconnected." The purport of the thing is somewhat the same, although there is a little difference.

HENRY H. EDGERTON, recalled for surrebuttal, testified as follows: 45908

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Edgerton, did you make an examination of the pressure of the gas of the complainant company for the month of December, 1919?

Mr. Ransom: I object to it as not surrebuttal.

The Master: How is that surrebuttal?

Mr. O'Brien: It rebuts the testimony given by the witness Woods as to the send-outs during the months of December, January and February.

45909

The Master: How does it rebut that? The send-out would be the same, wouldn't it? Your point is that you force out a greater send-out by a higher pressure, is that right?

Mr. O'Brien: Yes.

The Master: What is the question now?

(The question was read by the stenographer.)

The Master: Let me find out just what Mr. Edgerton is supposed to have done. I will ask Mr. O'Brien. You have made an examination of pressure how?

45910

Mr. O'Brien: Mr. Edgerton has made an examination of the pressure charts which I assume are in court. I requested that they be here.

The Master: That is what he looked at.

Mr. O'Brien: He went into an examination of pressure charts of the complainant company.

The Master: Well, he looked at those pressure charts.

Mr. O'Brien: He made an examination of them and the records of the company, and he made a comparison between the month of December 1919, and December, 1918.

45911

The Master: And he found what?

Mr. O'Brien: And he found that they were violating the order of the Public Service Commission, in the first place.

Mr. Ransom: I object to the statement of counsel, it is an absurd and improper statement.

Mr. O'Brien: I am going to prove it.

The Master: In what respect?

Mr. O'Brien: Well, the pressure they had on the street mains.

The Master: You mean they had too much pressure on the street mains?

Mr. O'Brien: Yes.

45912

The Master: In what year, 1919?

Mr. O'Brien: Yes.

Mr. Ransom: The Commission has full charge of that. It is not surrebuttal. The charts were called for during the defendants' case, and they were here for a considerable number of days. It is certainly not surrebuttal now.

The Master: I will sustain the objection.

Mr. O'Brien: I take an exception to your Honor's ruling. If it be based upon the claim that it is not surrebuttal, strictly speaking, I call your Honor's attention to the statement you have

45913

made tonight with great emphasis, that if there is anything that is out of this case, you want it brought in.

The Master: Yes, that is true, but there is not any plea in this case of any violation of the statute with regard to pressure, and assuming that there has been a violation of the statute in regard to pressure, it does not rebut the fact that more gas was consumed. It may explain why more gas was consumed, but I am afraid it is opening up something that means an interminable investigation, without any useful purpose in the case.

Mr. O'Brien: I do not think it does, your 45914
Honor, as to that. The examination on the subject is very brief. I make the assertion they have violated the orders of the Public Service Commission, in the first instance.

The Master: In what respect?

Mr. O'Brien: I say they have boosted their pressure to use it in this case.

Mr. Ransom: Perfectly ridiculous.

Mr. O'Brien: Take the examination of the witness, and if it is not well founded, it will fall to the ground, and if it is founded, it should be known by your Honor, and be passed upon in this case. They try to stress the point as to the 45915
peak of the load and of maximum pressure of the year.

The Master: Yes. Well, I will sustain the objection, upon the grounds already stated, and upon the further ground that you are asking the witness to make a comparison between pressure records of 1918 and pressure records of 1919, and that what should have been done, if you wanted that, was to introduce in evidence pressure charts for 1918 and 1919, and I will draw

45916

my own inferences and make my own comparisons.

Mr. O'Brien: I take an exception to your ruling. I think, your Honor, you are in grave error in making this ruling.

The Master: Well, I will stand by my ruling.

Mr. O'Brien: And in the argument that they have attempted to make about the capacity they must care for, and how close they are getting to the border line, if that word "camouflage" means anything at all, then after the examination of the witness Woods, bringing in here maximum

45917

days, taking groups of days, in order to emphasize the maximum daily output that they must care for, irrespective of what they do in the summertime, it is certainly surrebuttal to go back to this witness to show your Honor just how they have operated them as disclosed by the investigation made by our gas engineer, Mr Edgerton.

The Master: I will let my ruling stand.

Mr. O'Brien: Now, at this time I will ask if counsel has the charts in court, the pressure charts.

Mr. Ransom: They are in the building.

Mr. O'Brien: I ask that they be produced, that I may make an offer.

45918

Mr. Ransom: At least I think they are. I am willing to have the charts put in.

The Master: I just happened to think that I have got to convene in the morning to take that statement from Woods. Just one moment until we dispose of those charts. What charts do you have here in court?

Mr. O'Brien: I subpoenaed all the pressure charts of the company.

The Master: All of them?

Mr. Ransom: He asked on his subpoena for certain pressure charts which Mr. Edgerton had and those were here, they lay on the table for a

large number of days, and I thought they were in the building. I am not sure yet but what they are, and I am willing to have on rebuttal the charts go in. I would not be willing at this stage of the case to let this witness speculate and guess and try to interpret them, because it simply means opening up a new issue and putting back witnesses dealing with that question, which is not competent and not surrebuttal. If your Honor thinks the charts would be of any help to you, I should be glad to produce the charts either tonight or tomorrow, and have the charts, which are the 45920
evidence put in evidence.

The Master: Next question.

Mr. O'Brien: I will wait for the production of the charts on that matter, and proceed with the examination.

Q. Mr. Edgerton, what did you find to be, during the month of December, the pressure at the plant at 14th Street?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. To what extent did the pressures found by you exceed the pressures allowed by the Public Service Commission?

45921

Mr. Ransom: Objected to as utterly incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What did you find to be the pressures during the month of December, 1918?

Mr. Ransom: Objected to as incompetent, the charts are the best evidence, and not sur-rebuttal.

The Master: Objection sustained.

Q. To what extent did the pressures in December, 1919, exceed the pressures of December, 1918?

Mr. Ransom: Objected to on the same ground.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Ransom: I have here the charts which I was informed at the time were the charts which Mr. Edgerton had.

Mr. O'Brien: Will you pass them to me? I suppose by touching them they go into evidence in this case?

The Master: No.

Mr. O'Brien: Your Honor's ruling is that if we touch them—

45023 The Master: No, I have explained that ruling half a dozen times.

Q. Mr. Edgerton, I hand you a bundle of charts which are produced by counsel for the complainant, and ask you if they are the charts that were shown to you and examined by you at the Gas Company's office?

Mr. Ransom: Objected to as immaterial and incompetent, not surrebuttal.

The Master: I will allow it.

Mr. Ransom: Exception.

Mr. O'Brien: That was the terminology of the subpoena *duces tecum*, it called for the papers that had been turned over to Mr. Edgerton, the

45024 charts.

The Master: Mr. Edgerton just suspend looking at those for a moment, will you, and tell me something? What is the result of a higher pressure?

Mr. Ransom: I object to it as incompetent, not surrebuttal and the idea of letting this witness—

The Master: I am just going to let him explain it to me.

The Witness: The output of gas increases as the square root of the pressure.

45925

The Master: What do you mean by that, more gas forced through?

Mr. Ransom: Exception.

The Witness: More gas forced through.

The Master: Well now, when the consumer wants to, for instance, heat a room with gas logs, and he gets more gas, doesn't that heat the room quicker?

The Witness: Yes.

The Master: Now, I won't take any more testimony about this pressure business.

Mr. Chambers: He said it would do that, but ask him what pressure does generally, will you? 45926

Mr. Clark: That is not the whole field.

The Master: It all comes down to this, that the more gas that is being used, the quicker they cut it off, that is all there is about it.

Mr. Ransom: The quicker they make their roasts.

Mr. O'Brien: I object to the Master's comment and the Master's summary of the situation, and I object to the Master asking a couple of questions and then locking the door.

The Master: I do not think it is useful at all in this case.

Mr. Chambers: Let Mr. Edgerton explain. 45927

Mr. O'Brien: Go ahead, Mr. Edgerton.

Mr. Ransom: Objected to. If there is any question to the witness I object to it as incompetent, the witness utterly disqualified, not surrebuttal, it just tends to add—

The Master: No, it won't open up anything. Mr. Woods has told us about it.

Mr. Ransom: Not in rebuttal of anything brought out on the direct.

The Master: No, the trouble with it is that there isn't anything in this record that justifies any

assumption that any pressure was put on to accomplish any result.

Mr. Ransom: And the witness's last statement, according to the engineers present, is utterly ridiculous.

Mr. O'Brien: The engineers have not testified on this matter.

Mr. Chambers: Let him state.

Mr. O'Brien: Except that Mr. Woods got into it in his testimony and opened up the situation.

The Master: No, I won't take that, I am not going to open this all up.

45929

Mr. O'Brien: Your Honor, I will dispose of this matter very expeditiously, if you will allow it.

The Master: No, we will get another question.

Q. Are those the pressure charts that you called for and examined at the office?

A. In detail, I will look them over.

Q. Look them over, Mr. Edgerton, taking your own time?

The Master: Let him answer. He says apparently they are.

45930

Mr. O'Brien: No, he did not, your Honor.

The Witness: I could check these off. I brought up my papers in regard to the Kings County case, I hadn't the slightest idea of going on the stand, and the memorandum that was made in regard to these papers I did not bring up with me in that bundle of papers there.

The Master: Well, can't you tell?

The Witness: Well, generally they are, but they left out the essence of the whole business in the comparison I made.

The Master: They left it out when they gave it to you?

The Witness: Yes, when they gave it to me.

The Master: And you have got what you got at that time?

The Witness: I have got what I got at that time, but it did not give the information I wanted, so I went out and got it.

Q. Where did you get it?

Mr. Ransom: I object to it as incompetent.

A. At the works, where they were feeding out the pressure and regulating it.

Q. And in what form did you get it at the works?

Mr. Ransom: Objected to as incompetent, the question of whether you will let this case become ridiculous by letting this utterly disqualified witness wander on in a garrulous— 45932

Mr. O'Brien (interrupting): I object to counsel's characterization.

Mr. Ransom: Well, I cannot help it.

The Master: Just state your objection, you need not characterize anybody or anything. Now, let us hear the question.

(The question was read by the stenographer.)

Mr. Ransom: I object to it as incompetent, irrelevant, not surrebuttal.

The Master: In what form did you get it? How did you get it? 45933

The Witness: When I found—

The Master (interrupting): I do not want all that.

The Witness: Well, in the form by looking.

The Master: What did you look at?

The Witness: I looked at the pressure gauges.

The Master: For how long?

The Witness: I went three times and I looked at them each time and I looked at them for a long time.

The Master: At what works?

The Witness: At the 14th Street pumping sta-

tion, where they regulate the pressure out of the Amsterdam holder into the mains.

The Master: Anything else, at any other point?

The Witness: Yes, sir.

The Master: Where?

The Witness: At the 42nd Street plant.

The Master: Where else?

The Witness: Nowhere else except the 42nd and 14th Street plants.

Q. And what pressure did you find on the pressure gauges?

45935 Mr. Ransom: Objected to as incompetent.

Mr. O'Brien: Wait until I get through and put your objection to it.

The Master: Yes. Go ahead, ask your question. What pressure did you find?

Q. Yes, what pressure did you find?

The Master: Objection sustained.

Q. At the 14th Street governor station?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Q. What pressure did you find in the 42nd Street station?

45936 Mr. Ransom: Same objection.

Q. Did they have any charts at these stations?

The Master: Same ruling.

Q. Did you see the notations on the charts there?

The Master: Same ruling.

Q. Mr. Edgerton, on the walls of the stations?

The Master: Same ruling. I shall rule now, clearly, so that Mr. O'Brien will understand me, that I think that any claim of this kind should have been made in his case if there was any claim that there was any violation of any pressure rule or regulation or ordinance, it should have gone in in the defendants' case, and does not come at the proper time now.

Mr. O'Brien: Well, I say in answer to that, your Honor, that—

The Master (interrupting): It is not of sufficient importance, and I do not think it means enough to open up this case again.

Mr. O'Brien: Well, on that omnibus ruling, I suppose you would take in any kind of an excuse. It ought to be in this case, and it will be in this case on appeal, and I want to say in regard to that, your Honor, that you have reiterated time and again in this case, assuming that there is anything in your statement that this ought to be 45938
offered in the direct case by the defendant Edward Swann, you have time and again said in this case that you are not going to hold us to a tight rule, that if there is something that is omitted, it might be presented later on and all that. What does that mean?

The Master: I have added to what I said, that I do not think it is at all useful anyhow.

Mr. O'Brien: Well, I deem it to be of very great importance.

The Master: Well, I do not.

Mr. O'Brien: And I say it is the answer to their statement about their maximum daily out- 45939
put.

Q. Did you talk with the gentleman who was there in charge of the valves on the occasion of your visit?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What did these men say to you? Who were they?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What did they say to you?

The Master: Same ruling.

45940 Henry H. Edgerton, Direct.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Q. Did you ask at the main office, when you were there, for the distribution charts?

Mr. Ransom: Objected to as immaterial.

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

Q. Were you given the distribution charts?

The Master: Same ruling.

Mr. Chambers: Exception.

45941 Mr. O'Brien: Exception.

Q. To whom did you speak when you made your request for the distribution charts?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What excuse did he offer for not giving them to you?

Mr. Ransom: Objected to, contrary to the facts.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Q. Did you make a memoranda at the time that you saw the records of the pressure gauges in the 45942 14th Street and 42nd Street stations? Did you make notations as to what they showed?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. As to the pressure?

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Q. Have you got that ruling with you?

The Master: Same ruling.

Mr. O'Brien: Exception.

45943

Mr. Chambers: Exception.

Mr. Clark: Exception.

Q. Mr. Edgerton, in your long career in the gas making industry, will you state what effect, if any, in your experience the increasing of the pressure has to do upon the consumption of gas.

Mr. Ransom: Objected to as incompetent. The witness not qualified, immaterial, not surrebuttal.

The Master: Objection sustained. I won't sustain it on the ground Mr. Edgerton is not qualified. I think he has had enough experience with 45944
the gas business to be able to tell us.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Mr. O'Brien: Your Honor, as I get it, you have in mind as a basic foundation of your ruling, that you cannot take this proof because it assumes a purpose on the part of the complainant company, or it tends to prove on the part of the complainant company, a desire to boost the maximum daily output.

The Master: No, that is not my theory at all. My theory of it is this: In the first place, you 45945
have not introduced any statute, rule or regulation of any public body as to pressure. Second, that assuming that there is any rule or regulation or statute as to pressure on the service mains, or whatever they are called, on the distribution system, Mr. Edgerton is not prepared to testify and cannot testify to what the pressure is. All he knows is the pressure at the works. Third, that the testimony offered is a pure guess as to what result it has, and as to the bona fides of this company, and that I would not be justified and no person would be justified in assuming that because the pressure was higher to any extent,

45946 that it was done deliberately in order to force people to use more gas. Now—

Mr. O'Brien: Your Honor, our contention is that it shows not only that the purpose was not only to increase the maximum daily output, but was to offer while this case was on trial a bluff and an excuse for resuscitating the 14th and 42nd Street plants, just to afford some excuse.

The Master: I do not think it is at all useful on that theory.

Mr. O'Brien: That is one of the reasons why it is advanced and I renew the questions, so that
45947 you will have them in mind, that it goes to the question of their resuscitating for a few days while this trial is on, these old broken down plants, that is the purpose of it.

The Master: I won't let you renew the questions. The questions are on the record, my ruling has been squarely made on the record, I cannot see any possible use in this inquiry, it is a pure guess or hazard, and I won't have it, it doesn't tend to prove a thing.

Mr. O'Brien: Your Honor should bear in mind that three weeks are going to intervene while you are in Cuba, and if the complainants are em-
45948 barrassed by having this question raised, they have ample time to meet it; in fact they knew it was raised when I subpoenaed it.

The Master: I am not going to start trying this case again when I come back.

Mr. O'Brien: Well, they knew the question was raised, and they have not met it, and it is incumbent upon this claimant in this case to prove that they are making gas sufficiently economically—

The Master: Don't tell me all that. They know what their burden is and they know what

45949

their responsibility is, and I think I do, too. Now, is there anything else from Mr. Edgerton?

Mr. O'Brien: Well, the effect of your ruling is, your Honor, to place the whole burden of the case on the defendants here.

The Master: It won't be when I decide it. Is there anything else from Mr. Edgerton?

Mr. O'Brien: Why, I have got to go into the question of the—I will ask to be excused for three minutes, your Honor.

The Master: All right.

Mr. O'Brien: Your Honor, I will have to ask that the witness's examination be postponed until tomorrow morning. I have got a message that requires me to go home immediately. 45950

The Master: All right, adjourned till 9:30 tomorrow morning.

Adjourned until March 4, 1920, at 9:30 A. M.

45951

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 45955

Before: ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 4, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 45956
MR. O'BRIEN, of Counsel for Defendant Swann.

HENRY H. EDGERTON, resumed:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Edgerton, you heard the testimony of Frederick J. Mayer, deceased in his rebuttal, in which he refers to your method of appraising foundations. Will you briefly state your answer to his criticism? 45957

A. I adopted the usual method of taking the dimensions as furnished by Mr. Mayer himself, and putting it into cubic feet, and then applying the cost per cubic foot, including materials and labor.

Q. Are you talking about foundations now or buildings?

A. Foundations.

Mr. Ransom: I move to strike out his statement.

The Master: Motion denied.

45058

Q. Go ahead?

A. That is the usual calculation in estimating buildings, starting with the foundations. In the first place, if we are estimating on a building that is already built we endeavor to find out what sort of foundations there are. They can be examined in the basement to a certain extent in some cases. In some cases we have recourse to plans and specifications. In appraising the buildings particularly at 21st Street I found a memorandum in the schedule of buildings handed to me, of foundations. There were no foundations for machinery, as far as visible, because the building was
45059 floored over, and there was nothing in the building that would require a foundation that is it was light weight stuff that would not require any special foundations at all, so I made no estimate on the foundation where there was nothing to put on the foundation.

Q. You have referred to light machinery—

A. Light machinery—well, they had there a great of machinery for taking care of gas stoves, and taking care of this, that and the other, which did not require any foundation.

Q. On page 4594 of the Supreme Court record in the prior suit Mr. Mayer was asked about your method of computing and appraising foundations?

45060 A. I adopted the usual method, I even put in piles under foundations where I was absolutely sure, almost, that there were no piles, as evidenced by the fact that the building of the foundations had sunk, the water table was not in a straight line at all it had settled, and therefore I would have been justified in leaving out piles in that case, also where he put in piles where I knew they could not be driven, for instance, in 21st Street where Rowland had left them out, and where I saw that the nature of the soil, that is, it was rock and clay, from the nature of the soil they could not be driven.

Q. He says that, "excavation in ground of this character where there is a large quantity of water to be encountered is exceedingly slow and is worth $2 a cubic yard." What have you to say as to that?

A. Oh, I did not estimate any such amount.

Q. I am talking about Mayer's testimony?

A. I say in regard to that that those foundations there in my judgment could be put in without any amount of pumping of water for the simple reason that it was in rock and clay, where water does not come in.

Q. Did you find the character of the soil there to be rock and clay? 45962

A. By actual inspection, no, I couldn't do that in the time required, I couldn't dig down and ascertain the character of the ground throughout to any depth.

Q. As far as you went what did you discover?

A. As far as I went there was no trouble in foundation excavation any more than the ordinary digging.

Q. In the books and records of the company which you went over did you find any evidences of money having been spent for pumping and for piling?

A. Only the record of Rowland who left out both the piles, and the foundation, as far as any special difficulties— 45963

Mr. Ransom: I move to strike out his statement about Rowland.

The Master: I will take whatever Mr. Edgerton wants to say about that.

Q. Was Mr. Rowland a brother-in-law of Mr. Bradley of the Consolidated Gas Company?

Mr. Ransom: I object to that as immaterial.

A. Yes.

Mr. Ransom: I move to strike out the answer.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. Mr. Edgerton, Mr. Mayer on page 4594 of the

Supreme Court record in the prior suit said that you had not made any allowances "for the solid concrete and brick foundations which are under the water gas apparatus as shown on the sketch of the foundations which you have prepared"—meaning Mr. Mayer.

Mr. Ransom: I object to that as incompetent. The witness's appraisal put in evidence by him on his direct testimony in this case is the best evidence of what he did.

Mr. O'Brien: The whole testimony of Mr. Mayer is taken up with asking if Mr. Edgerton

15065 did so and so and what he had to say about it.

The Master: I will allow it.

A. They showed me no plans. I inquired for plans at every place where I went and where these foundations were the generator and larger apparatus, superheaters, carbureters, the place had been filled with foundations in part for the machinery that was previously there, and all it required was extra foundations in order to put the machinery in, and I allowed for that in the appraisal, but I did not allow for as much probably as Mr. Mayer allowed, because Mr. Mayer, and the United Gas Improvement Company, when they sent out machinery make plans for founda-

15066 tions and everything required to put that machinery up. Now, that could not be followed in that case, because there were partial foundations there.

Q. That had formerly been used for what kind of a plant?

A. Retort house.

Q. Retort house?

A. Retort house as they told me and as I remember it.

Q. This refers to the 14th Street station?

A. No, it refers to the 21st Street station where they changed to water gas.

Q. Now, he proceeds on page 4595 of the record in the prior suit to take up certain buildings and other properties as appraised by you, and referring to the 11th Street exhaust-er house he says that you put in your estimate brick at $14 a thousand laid, and then being asked the actual cost he says, $25 a thousand.

A. That $25 and $14 was the extreme difference between Mr. Mayer and myself in appraisal. He appraised everything by the cubic foot factor, and he had deduced it by using $25 a thousand for brickwork. I used $25 a thousand for brickwork in some cases where it was an extra character of brick. I seldom 45968
used $14. That was where it was poorest and most depreciated, and evidently laid in mortar, and there was very little of it used. The only place I remember distinctly was 132nd Street, where there was a fine building of pressed brick, not of the character of Philadelphia pressed brick, but still pressed brick. By mistake a figure was used of $14 a thousand to compute that cost. That was erroneous and was shown up. They blue-penciled that in, it is in the record by mistake.

Q. In other words, your testimony was not that it was $14 a thousand?

A. The computation was made at $14 a thousand, 45969
and it left about $6,000 short of what that building cost. It had been just recently erected, but I put it in with an appraisal of $30,000, so that that amount covered the pressed brickwork. I say that the $14 a thousand for that engine house, which was pressed brick, should have been included at $25 a thousand.

Q. Now, you are talking about a certain building, are you?

A. Yes.

Q. That hasn't got anything to do with your prior statement with reference to this criticism on page 4595 as to the general difference between Mr. Mayer and you on the cost of laying brick?

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Mr. Ransom: I object to Mr. O'Brien lecturing his witness as to what he means or does not mean.

A. $14 a thousand was employed in only a very few places in that estimate by me, and it was applied where I found that brickwork was old, and before they had commenced to use cement in building brickwork, and subject to considerable depreciation.

Q. He says in reference to the stone footings that you estimated at 90 cents a cubic foot, and that the actual cost, he says, is $1.40?

45971 A. As to that item, I took great pains about getting unit prices. In 1906 just temporarily unit prices of some things went up. It was the year before the panic of 1907, and there had been a great many circular letters sent out on both sides, to builders, besides to Mr. Deeves and others, and they had pumped up quite a notion that there was a large amount of building to be done—well, they got that impression I know.

Mr. Ransom: This is not in any respect surrebuttal. The witness was examined and cross-examined on these unit prices in his direct testimony.

The Master: I will allow it.

45972 Mr. Ransom: Exception.

Q. Did you know of work being done at that time, stone footings, at 90 cents a cubic foot?

A. Yes, sir.

Q. Now, he says that you estimated flooring at $40 per thousand, board measure, and he gives as his statement that the cost of material alone without any labor is $42. What is your answer to that?

A. That is an error on his part. Flooring comes prepared to lay right down and is generally bought tongued and grooved and you simply have to saw it to dimensions and nail it to the floor. There is very little labor it is planed and fitted for position.

45973

Q. You are talking as of that time?

A. Of that time and always since I have been in the business of building we bought all that stuff tongued and grooved and ready for the carpenters to lay right down.

Q. Then your estimate of $40 per thousand feet, board measure, included the labor?

A. It included the labor of putting it down, and it included in almost all cases a contractor's profit.

Q. He said that you estimated yellow pine girders at $40 per thousand feet board measure and that his opinion was that the actual cost of the material would hardly be covered by that estimate without any labor. What is your answer to that?

45974

Mr. Ransom: I object to that as incompetent. He was fully cross-examined on this in the defendants' case.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Prices at that time I say were a little higher that year and as far as girders are concerned, I knew and Mr. Mayer, I think should have known, and everybody knew, that there was very little work put on them.

Q. Now, he said that you put the steel checkered floor plates at 5 cents a pound, and he gives his statement that the material cost alone at that time was 3 1 2 cents a pound, and the cost of labor to lay the plates, including fitting and cutting, was 1 3 4 cents, making a total, without any profit to the contractor, of 5 1 4 cents. What is your answer to that criticism?

45975

Mr. Ransom: I object to that as having been gone into fully on Mr. Edgerton's direct and cross-examination.

The Master: Objection overruled.

A. Mr. Mayer and Bartlett-Hayward were doing

43976 pretty much all the work I was building at that time. I put in figures there that fully covered, more than covered the class of work that they did, as shown by their own bills. He may have figured some special job, a specially difficult job. Sometimes those engine rooms, there is cutting and fitting, but I allowed all I thought proper for that.

The Master: Who was this Mr. Mayer, what was his business?

The Witness: He was the constructing engineer of Bartlett, Hayward & Company for many

43977 years.

The Master: He did work for you, too?

The Witness: All the work from 1882 on was done by Bartlett-Hayward.

The Master: Was Mr. Mayer a pretty capable man?

The Witness: Oh, yes, he was a very capable engineer and constructor.

The Master: You see that is the trouble with this kind of expert testimony. Mayer is a reputable man and gives his opinion. Mr. Edgerton is a reputable man and gives his opinion. One opinion is the complainant's side and the other opinion is the defendants' side. I get perfectly

43978 disgusted with this opinion evidence. There must be some more definite basis for fixing values than that.

Q. He says on page 4596, Mr. Edgerton, that you allowed 50 cents a cubic yard in the instance of the 132nd Street governor and boiler house, and in another instance applied a figure of $1 a cubic yard, and then being asked what the average cost for deep excavation of that character was as required in such buildings, he answered, "Not less than $1.25 including the cost of disposing of the earth, the dumping privileges, etc." He says that you made no allowance

45079

for contractor's expenses, for office force, draftsmen, scaffolding, shop, wear and tear on tools and appliances, etc. What is your answer to that general criticism?

A. I allowed on those specifically in many cases. It was put in the appraisal, except I may say on 14th Street I did not make as large an allowance, and 42nd Street, as I did on the others, but they were all allowed for, many hundreds of thousands of dollars were added. In regard to iron, the iron market happened to be up in 1906, in fact away above the average, it was about $3 a ton on pipe.

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Q. Did it go down after 1906?

A. Well, yes, it tumbled after 1906. In 1907 the bottom tumbled out of everything. On the cost of construction I went to Mr. Deeves, who did work for the Gas Company, and various other Gas Company men. I did not confine myself to ordinary work, but took that special work of gas works building. I had about a dozen estimators who were all construction men engaged in the largest construction companies in the City, and had other information, whereas Mr. Mayer put it on cubic feet, the air contained in a building. Really it is a capitalization of air instead of the brickwork.

45081

Q. On page 4507 he says when asked a question by his counsel as follows:

"Q. At page 5347 he states that one-third of the cost of the holder is an ample allowance for the cost of the guide frame. What have you to say as to that proposition, Mr. Mayer?

"A. I can only say that such estimate is absolutely erroneous. Some twenty-five to thirty years ago it was the intention to have the various gas holders uniform in their construction and at that time they endeavored to use a column on the guide frame for every ten feet in diameter of the holder but such were only

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endeavors and could never be carried out with any kind of certainty. For instance a holder 60 feet in diameter would have 6 columns, one 70 feet in diameter would have 8 columns, one 80 feet in diameter would have 8 columns, etc. Now, there were no holders built at that time with an uneven number of columns in the guide frame. Why that was so I cannot say, but nevertheless it was the fact and in the very instance of the Consolidated Works a glaring example of this kind exists which will prove positively that Mr. Edgerton's assumption that the guide frame of the
45983 holder amounts to one-third of the cost of the holder is impossible. For instance the four holders at 21st Street station of 400,000 feet capacity are constructed in three lifts with an outer section of 88 feet in diameter. These holders have 16 cast-iron columns in the guide frame. At the same station there are six holders each of 345,500 cubic feet capacity constructed in two lifts, the outer section of these holders is 95 feet in diameter. These holders have guide frames consisting of only 8 cast-iron columns.

"Q. The diameter is greater but the number of columns is only half as many?

"A. The diameter is greater but the number of
45984 columns is only half as many. The two holders of 250,000 cubic feet capacity at the same station are constructed in two lifts with 84 feet in diameter, and the guide frame only contains 6 columns, so it will be seen that the maximum valuation in the diameter of the different holders as between 84 and 95 is only 11 feet, whereas the variation in the number of columns amounts to over 100 per cent, and such difference excludes all possibility of applying a general rule which assumes that the cost of the guide frame to the holder is one-third of the cost of the holder itself."

I am asking you what your answer to that general statement is?

Mr. Ransom: I object to it as incompetent, not surrebuttal. Mr. Edgerton was cross-examined at length on this very matter when he testified as a witness for the defendants on their direct. I read to him his answers when he was testifying as a witness for the defendants in this case, I read to him the answers in the other case.

The Master: Now, Mr. O'Brien is reading something that he wants an answer to.

Mr. Ransom: This is not his testimony, he is 45986
reading something of Mr. Mayer.

Mr. O'Brien: I am showing you how Mr. Mayer browsed around the whole pasture land when he was given a chance.

A. I can answer that very shortly, and that is this, that those holders were standing there, they had not fallen down, and therefore they had sufficient columns. Where you have small thin columns you have many of them, and where you have heavy columns you can do with a smaller number. A great many holders are built without any columns at all, and have no guide frame, and have worked successfully for years, and I have called attention to that. I used that very little, 45987
I only used it where I could not get at the thickness of material.

Q. You mean you used this formula of one-third for the guide frames very little?

A. Yes I used that where I could not find a hole in the column where I could measure the thickness of the iron, or something of that kind that prevented it, and could not get at the exact figures, but most of their guide frames were calibrated and calculated out.

Q. Could you approximate the number of cases in which you used that percentage?

A. I think that 21st Street place was probably one,

but all the modern holders were wrought iron, had wrought iron lattice work and Phoenix columns. A Phoenix column made of wrought iron was easy to get at. Besides that, you don't have to calculate only one bent or section of a holder. You measure one column and you have all of them, and the only extra work is ladders and steps, and so on.

Q. Applying your rule to the holders of the company generally would it be a fair measure of the cost of the guide frames?

A. It was based on a calculation at the time that it
45089 would be a fair measure, yes.

Q. The witness stated on page 4598 as follows:

"Q. Now, what were your values on holders and apparatuses, with which Mr. Edgerton disagrees, based on?

"A. My valuations for holders and apparatuses are all based on actual detailed estimates. Of course it was impossible for me to make any such detailed estimates in the time at my disposal during my examination of the plants, but as I had access to all the detailed estimates of the firm of Bartlett, Hayward & Co., with which I was formerly connected, and which estimates are an accumulation of over twenty-five
45090 years, made partly by myself or under my personal direction, I was thoroughly familiar with applying them to the apparatuses in question at the works of the Consolidated Gas Company."

What is your answer to that?

The Master: I cannot take that. There isn't anything to answer there. I don't want Mr. Edgerton to argue something. There is nothing to answer there.

Q. Mr. Edgerton, I have read that question and answer and ask you now if Mr. Mayer, taking these estimates which Bartlett-Hayward has made of other plants and in other years, fairly presented the fair

reproduction cost of the holders and apparatuses as of 1906?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. O'Brien: All the way through Mayer was asked that kind of questions as to Mr. Edgerton.

The Master: I was not the Master in that case.

Mr. O'Brien: But you have allowed the testimony in here.

The Master: Because Mayer is dead.

Mr. O'Brien: You mean we have to take the 45992
corpse just as it is without any operation?

The Master: Yes.

Mr. O'Brien: You have to take it *in toto* and without making your application—

The Master: Yes, I think under the circumstances disclosed in this case I have got to do that, and over and beyond that I won't allow that line of questioning to Mr. Edgerton now anyhow.

Mr. O'Brien: We have got to be penalized, as I said because Mr. Edgerton is living.

The Master: Yes, you have got to kill him.

Mr. Chambers: Exception. 45993

Mr. O'Brien: Mayer can say what he thinks of Mr. Edgerton, he can go on and say whether it is absolutely erroneous—that is the way he puts it, and that is the way this astute counsel, Mr. Mathewson for the Gas Company was allowed by the Master who preceded you—

The Master: I did not hear you say the astute Master allowed him to do it.

Mr. O'Brien: I won't say anything about him. He was overruled by the Circuit Court, and then some by the Supreme Court of the United States.

The Master: I won't allow this.

Mr. Chambers: History sometimes repeats itself.

Mr. O'Brien: You simply have an instance here—Mr. Miller says—he has learned it almost word for word this wonderfully brainy Miller—he says he has gone over the estimates of Bartlett, Hayward & Co.—

Mr. Ransom: The man who built them naturally knows about them.

Mr. O'Brien: If you trace the records you
45005 won't find that he went back to the cost of these plants, and that is why I want to bring out that question.

The Master: By the question you have put to Mr. Edgerton you want Mr. Edgerton to say that Mr. Mayer could not fix values that way. I am the one to say that.

Q. Now, as to Mr. Mayer's work in this case, wasn't he excessive in all his estimates, Mr. Edgerton?

Mr. Ransom: I object to that as incompetent and not surrebuttal.

The Master: Objection sustained.

45006 Mr. O'Brien: The witness was allowed to say that of Mr. Edgerton.

The Master: But I won't let Mr. Edgerton say it of Mr. Mayer.

Mr. Chambers: Then strike the other out.

The Master: No.

Q. What is your opinion of the estimates made by Mr. Mayer in this case, first on buildings, and then on holders and apparatuses?

Mr. Ransom: Objected to as not surrebuttal and incompetent.

The Master: Objection sustained. I am sustaining it upon the ground that when Mr. Edger-

ton gives one figure and Mr. Mayer gives a higher figure it necessarily follows that in Mr. Edgerton's opinion that Mayer is excessive and too high.

Mr. O'Brien: This is another reason for my question. You have asked Mr. Edgerton a general question as to Mr. Mayer, and he said to you frankly something about it. Now, you didn't go far enough to let the witness cover the subject adequately. It might be quoted afterwards by counsel for the complainant, that Mr. Edgerton paid this tribute to him. 45908

Mr. Ransom: I will agree not to quote Edgerton on anything. I will stipulate that on the record.

The Master: In spite of any tribute that Mr. Edgerton pays to Mr. Mayer as a capable man, Mr. Edgerton by his testimony says that Mayer was too high in his figures. The mere fact that he concedes that Mayer is a capable man does not concede that Mayer is right when he swears he is wrong.

Q. Mr. Edgerton, what method of appraisal did Mr. Miller's predecessor, Mr. Mayer, adopt for the appraisal of buildings? 45909

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained. I don't think in the prior case that was a proper line of inquiry, and if I had been conducting the other case I would not have allowed it.

Mr. O'Brien: There is a lot of this stuff you would not think of putting in. I am going to move to strike out the whole of Mayer's testimony.

The Master: I told you the time would come for motions to strike out. What is the use of wasting time on it now?

Q. Mr. Edgerton, were all of the estimates made by Mr. Mayer of holders based upon arithmetical average?

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial and not surrebuttal.

The Master: I will take Mr. Edgerton's answer on that; otherwise I will have to look at it perhaps myself to find out.

A. Yes. In figuring out his testimony where he gave the prices of different qualities of steel, he added them all up, and he took an arithmetical average of
46001 that price, and on even that he put a percentage for labor, a percentage for this, that and the other, and it was equivalent to giving the same weight to rivets at 4 cents a pound as it was to tank steel at 1 1/2 cents, and it exaggerated the cost of a holder enormously because of that method of getting a unit cost.

The Master: What do you figure a tank worth per unit of capacity?

The Witness: Well, of small holders it will run—I have a great many calculations on that, and I have the actual appraisal of—

The Master: Well, what is the range per thousand cubic feet capacity?

46002 Mr. Ransom: I object to that.

The Witness: That range according to Mayer's testimony is $380 for a small holder to about $76 for a very large holder.

The Master: That was a good many years ago?

The Witness: Yes, I don't know as they could build them any cheaper now.

The Master: Well, they can't build them any cheaper now of course.

The Witness: Well, they do. I have seen holders built down to $25 per thousand cubic feet of capacity.

The Master: When?

The Witness: Quite a number of years ago

Mr. Ransom: Out of his present malice and resentment he probably thinks the company can build and have money presented to it by the contractor for permitting him to build.

Q. Mr. Edgerton, is the arithmetical average method of computing cost of holders bound to lead to error in the conclusions?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained. The witness has already stated that the method pursued 46004
by Mayer necessarily means an exaggerated value. That is all I will let him say.

Q. What method did you use?

Mr. Ransom: I object to that. His appraisal is all in evidence, he has testified to it and it speaks for itself.

The Master: Yes, I think so.

Mr. O'Brien: He can cover that in one answer.

The Master: No, objection sustained. That is the best way to cover it.

Mr. O'Brien: Exception.

Q. Will you explain the differences between your 46005
method and his.

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. When you took this weighted average did you apply it to each detail that made up the cost of holders?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. So that your estimated cost of steel varied according to the character and the size and the weight of the particular part of the holder that you appraised in detail?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. On page 4600 Mr. Mayer was asked as follows:

"Q. In your estimates which have been attacked by Mr. Edgerton in regard to these items, did you in addition to your own knowledge make any inquiry at the time of the manufacturers as to the prices at which the boilers could be installed?

"A. I so stated that in my testimony.

4600 "Q. As an illustration, Mr. Mayer, have you here a sheet showing the detail in which it is necessary to go and into which Mr. Edgerton did not go, to make an exact estimate of the cost of a gas holder?

"A. I have.

"Q. This estimate is a hypothetical holder of the type of the 132nd Street holder, 5,000,000 cubic feet—

"A. It is of the same dimensions, but slightly less in pressure I think.

"Q. Now, does this detail which I hold in my hand show the detail into which it is necessary to go to give an exact estimate of the holder?

"A. Yes.

4600 "Q. In making the estimate of the value of these different apparatuses how did you proceed as compared to the way in which you would proceed to make a bid for furnishing such apparatuses?

"A. Identically in the same manner.

"Mr. Mathewson: I offer this paper in evidence as an illustration of the detail into which the witness says it is necessary to go to get the actual value of a holder. This is not an estimate of the 132nd Street holder, but illustrative of what it is necessary to do to get the exact value of the holder, but Mr. Edgerton stated on the stand that he did not do that."

Now, I ask the privilege of having Mr. Edgerton do just the same as Mr. Mayer was allowed to do in this respect.

Mr. Vilas: I object to that as incompetent and not surrebuttal.

The Master: I will not take it.

Q. Now, will you proceed, Mr. Edgerton, to point out details of an appraisal as you say an appraisal of the cost of a holder should be made, pointing out the differences between you, yours and Mr. Mayer's method?

Mr. Vilas: I object to that as irrelevant, incompetent and immaterial, not surrebuttal, and gone into on Mr. Edgerton's testimony. 46010

The Master (referring to paper handed to the Master by the witness): This makes reference to your testimony?

The Witness: That shows how I got weighted average instead of the arithmetical average.

The Master: Yes, by reference to your testimony?

The Witness: Yes, and to Mayer's also. That is what he put in.

The Master: In other words, what you have done here is to prepare some tables showing, based upon the testimony, how you arrived at certain figures? 46011

The Witness: Yes, sir.

The Master: I won't take it.

The Witness: It is also Mr. Mayer's figures on the different qualities of steel that he put into the holders.

The Master: No, this is an entirely different statement. I won't take it.

Mr. O'Brien: Will your Honor allow him to proceed orally to give you in brief the detailed dif-

ferences between his method and Mr. Mayer's method, to show you that Mr. Mayer's method is wrong, unfair and misleading?

The Master: No, I won't do that. The witness has described his method, I think, sufficiently. Mr. Mayer has described method, and the Court will have to reach a conclusion as to which is apparently the right or wrong. I think we have had enough. I don't think either one is right.

Mr. O'Brien: Exception.

Q. Mr. Edgerton, in what other respect did your
46013 method differ from Mr. Mayer's than in the using by him of an arithmetical average and by you of a weighted average?

Mr. Ransom: I object to that as incompetent, not surrebuttal, and that the subject has been fully covered.

The Master: I think it is fully covered. It will be sustained on that ground.

Mr. O'Brien: The other differences I don't think have been narrated yet.

The Master: I think we have had enough. Mr. O'Brien, I am very clear in my mind that this line of examination is not at all helpful. Mr.
46014 Mayer gives one set of figures and Mr. Edgerton gives another set of figures. They have gone into detail in showing how the other one is not right.

Mr. O'Brien: I will ask that this be marked for identification.

Mr. Ransom: I object to its being marked for identification.

The Master: The application will be denied

Mr. O'Brien: You don't want the paper marked?

The Master: No.

Mr. O'Brien: You see on appeal, we have got all this Mayer stuff in there—

Mr. Ransom: And you haven't Edgerton stuff?

Mr. O'Brien: These things will be lacking.

The Master: Well, I think they ought to be lacking. They are simply a summation of matters that are in the record. I won't take it—that is, of matter that was in the other record.

Mr. O'Brien: Exception. You have not seen the Mayer paper yet.

The Master: Yes, I did, it has about eight figures on it

Mr O'Brien: I am talking about the paper at this time where he proceeds to show you how he 46016
would—

The Master: Yes, that little slip had about eight or ten figures on it.

Mr. Ransom: No, Mayer's figures were very elaborate.

The Master: But this paper that Mr. Edgerton has is not that. It is a series of tables based upon references to testimony in the prior suit showing what Mayer testified to and what he testified to, and it is not what Mayer prepared namely, a hypothetical—

The Witness: You are mistaken there, it is.

The Master: I say it is not Mr. Edgerton. I 46017
don't think it is useful anyhow. I don't think Mr. Mayer's should have been permitted in.

Mr. Chambers: Then your Honor should strike it out.

The Master: Maybe I will.

Mr. O'Brien: I covered holders, your Honor. I think I will press the questions as to the buildings again—as to the method of computing buildings or appraising buildings.

Q. Mr. Edgerton,, in what respect did Mr. May-

er's method of appraising the cost of erecting buildings differ from yours?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did Mr. Mayer's testimony consist in reporting the results of his inquiries of Mr. Deeves and other builders in New York?

Mr. Ransom: Objected to as incompetent and improper.

The Master: Objection sustained.

46019 Mr. O'Brien: Exception. I am asking the same questions. Your Honor has got to rule out the Mayer testimony.

The Master: That is another question.

Mr. O'Brien: He proceeds to ask him on page 4003, this statute Mr. Mathewson—to ask him about the errors that he claims are in Mr. Edgerton's figures, where he says there are errors and omissions throughout, and then he is asked in the next question, "Do you consider these errors fundamental, or are they merely of slight account"?

The Master: Wait a minute now. Was there

46020 any objection to that question? What was Mr. Burr doing when that question was asked?

Mr. O'Brien: At this particular point, I assumed that these questions had been more or less—the line of investigation pursued here was objected to by counsel for the defendants earlier in the session.

The Master: Well, I will not take it.

Mr. O'Brien: Early in this particular session it was called to the attention of the Court that it was not proper examination.

The Master: I cannot understand on what theory the Master let it in, and I won't.

Mr. O'Brien: I illustrate here what I am driving at, by showing you this question:

"Q. Do you consider these errors fundamental, or are they merely of slight account?

"A. No, they are errors which would absolutely give a wrong impression concerning the value of such buildings and construction.

"Q. What, then, do you say generally concerning his estimates of the value of buildings and apparatuses, wherever they fall below your figures?

"A. I can only say that these estimates have not been made upon any knowledge of expenses or conditions as they exist in New York, and therefore I cannot accept them as being fair valuations." 46022

Q. Now, what do you say, Mr. Edgerton, as to that statement made of you by Mr. Mayer?

Mr. Ransom: Objected to.

The Master: Yes, I will let him answer that, just that way. Did you in fact make them based upon the conditions, the knowledge of conditions?

Mr. O'Brien: In New York City?

The Master: In New York City.

A. Yes, I was pricing everything in New York City. 46023

The Master: Mr. Mayer was not correct in what he said?

The Witness: No. I know Mr. Mayer's figures. Mine were combined with them. These figures of different contractors vary according to what they think they can get. You have not taken that point into consideration. If they are making a bid for somebody and they think they can get a little more, why, they put on a little more, and that is the cause of variations that frequently arise. Now, I—

Mr. Ransom: I object to this statement of witness.

The Master: I will let him do it. I have got to give Mr. Edgerton a chance to say that Mr. Mayer does not know what he is talking about when he criticises him.

The Witness: From 1872 to 1905, when I went into this case I was constantly appraising data, making computations and bids, for Mr. Mayer and Bartlett-Hayward of all the work I built, and I kept tabs on it, of course.

The Master: He has answered it. Next question. I have let him answer it.

46025 The Witness: At the time in 1905—

The Master: No, I do not want any more. Mr. Mayer said you did not know what you were talking about and you said you did.

The Witness: Yes.

Q. Did Bartlett-Hayward at that time and for some years prior thereto, have a monopoly of the business of putting up plants, a substantial monopoly of putting up gas plants?

A. Yes, sir

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, that is the point.

46026 The Master: I said objection sustained. We are not going to try out any monopoly case here.

Mr. Ransom: Prior to 1905, or prior to 1872.

The Master: Mr. Edgerton would say they had a monopoly.

Mr. O'Brien: Yes.

The Master: If he said yes and the stenographer got it, the answer is stricken out. I am not going to open up any such line of discussion as that. Mr. Ransom will say it is not so, and he will call a witness to say they did not

46027

have a monopoly, and you will call another witness to say they did. There is nothing to that.

Mr. O'Brien: But your Honor will have a chance to go into the books of the company and verify it. There is not anybody building holders for this company except the Bartlett-Hayward Company; there is not anybody putting up plant for them except Bartlett-Hayward.

The Master: That does not prove anything. In my work down in the office, when I need a stenographer, I send for a particular individual, and all my books will show that all my bills are from the one stenographer, and the money goes 46028
to that particular individual. Does that show he has a monopoly of it?

Mr. Ransom: The books show four other contractors who have built holders for this company.

Mr. O'Brien: I asked the witness first, not as to this company, did the Bartlett-Hayward Company have a monopoly of the gas building of gas plants?

The Master: I have ruled it out.

Mr. O'Brien: At that time and prior thereto.

The Master: I have ruled it out. 46029

Mr. O'Brien: The other question after that was whether they have not done all of this company's business, practically, in putting up gas plants.

Mr. Ransom: The evidence shows that they have not.

The Master: I have ruled it out.

Mr. O'Brien: It goes to the question of Mayer's testimony, and it goes to the question of interest and the question of bias.

Mr. Ransom: The record shows four other companies who have built holders.

Mr. O'Brien: They put him on to testify; they take Alexander Humphries, connected with this company, who had stock in this company—

The Master: Mr. Humphries was not called in the suit.

Mr. O'Brien: No, but he was called in this case. I am illustrating, your Honor, how you simply are hedged around in this case by the testimony of men who breathe gas, who are in the presence of the octopus, who are living on the octopus, and who have been living on it for

46031 years, and you have to consider those facts when you consider their testimony.

The Master: But we have enought of it. Objection sustained.

Mr. Ransom: There are four other companies built holders.

The Witness: And they fell down.

Q. They did fall down, did they?

Mr. Ransom: One of them.

The Master: Objection sustained. In a minute you will be proving that the gas companies were foolish to have anybody build them. They probably were the only people around to do it.

46032 Mr. O'Brien: Your Honor, I do not know just what to say about this testimony. I want the record to be complete with Mr. Edgerton's answers to these criticisms, and yet I feel that this whole testimony of Mr. Mayer—and I say this with all respect to the fact that he was vice president of this company—it is a chop suey.

Q. Mr. Edgerton, the attention of Mr. Mayer was called to an alleged suggestion of yours that a new plant could be constructed with fewer pipe connections than those called for in your valuations, and he was asked:

"Q. Now, if the old mains had been maintained

in the plants of the Consolidated Gas Company as the connections had, additional lines laid, would that indicate any antiquated or out of date or improper construction?

"A. I doubt that additions to existing plants could be made when the plant is to be kept in operation, without simply adding to the existing mains and making the existing mains a part of the reconstructed plant.

"Q. Now, so far as you have observed, what about connections, were they in use or not?

"A. As far as I was able to ascertain and as far 46034
as I was able to see, they were all in use.

"Q. Where you have several lines of connections, would it be in your judgment wise and economical to throw out these smaller connections in order to put in newer larger ones?"

After objections, and overruling of objections, and exceptions the witness said:

"A. No, it would not be wise, for the reason that you would be compelled to shut down the plant.

"Q. What would you do, add additional connections and keep what you had?

"A. There is no other way of adding to a plant that has to be kept in operation, as I have said." 46035

What have you got to say of that criticism of Mr. Mayer's?

Mr. Ransom: Objected to as incompetent.

The Master: I will take it

Mr. Ransom: Exception.

A. Well, where you are adding on to a plant and putting the machinery in different positions, for instance changing from coal gas to water gas, you have to put in larger pipes, but as soon as that is finished they are thrown out. I did not estimate on that duplication, of course, because they were out of use, you could not use them.

Q. Was not Mr. Mayer's testimony in this respect predicated, not upon a reproducing of a new plant, but upon a plant with accretions from time to time, and the use of old equipment and the duplicating of pipe?

A. It was, so far as the plants were concerned, and his testimony there shows it. That is to say, he kept those in the appraisal, and that is the reason there is such a large difference in connections between his appraisal and mine. I threw them out.

Q. Did Mr. Mayer in his estimate use general
46037 contractor's profit?

Mr. Ransom: Objected to as incompetent. The testimony speaks for itself.

The Master: Objection sustained.

Q. Engineering profit?

The Master: Objection sustained.

Mr O'Brien: Exception. Your Honor, I am only persuing exactly a similar line of questioning.

The Master: But I will not allow it.

Mr O'Brien: I mean Mr. Mayer's testimony has all got to be obliterated, for he has been asked all the way through questions like that, 'What do you think of Mr. Edgerton's idea of
46038 depreciation: what percentages did he give for depreciation on that; what percentages on that" —he goes all the way through the examination and is asked to characterize the testimony of Mr. Edgerton.

The Master: Well, he should not have been permitted to.

Mr. O'Brien: I move at this time to strike out the whole of the rebuttal testimony of the witness Mayer.

The Master: The motion is denied at this time.

46039

Mr. O'Brien: Exception. Your Honor, if it was not clearly put yesterday, I want to offer in evidence all of the testimony in the prior suit in rebuttal, or the cross-examination—the cross-examination in the direct and the cross-examination in rebuttal of the witness Preiss. I do not know whether the stenographer got that yesterday, but I do not want to have any omission of that testimony.

The Master: You are now offering—

Mr. O'Brien: With the same reservations that I made yesterday with respect to the testimony of the witness Mayer and the witness 46040
Simpson, I now offer, without waiving any rights that I have under the objection originally made by myself and the other representatives of the defendants to the incompetency of the testimony and the immateriality and the irrelevancy of the testimony of these dead men—I now offer the testimony, the cross-examination of Mr. Preiss, which I take it from Judge Ransom's statement is already in, the cross-examination in the direct.

Mr. Chambers: They were directed to read all of it.

Mr. Ransom: All of the testimony of Mr. 46041
Preiss when he was called as a witness by the complainant in the prior suit was read in. Mr. Preiss did not testify on rebuttal. All of the testimony of Mr. Mayer called as a witness by the complainant in the prior suit, as a witness on the complainant's case, both the examination in chief and rebuttal, was read in. The same thing is true with respect to the witness Simpson.

The Master: All of the testimony offered by these three men is in this record.

Mr. Ransom: It is.

Mr. Chambers: Including the cross.

Mr. O'Brien: Then I withdraw the offer.

The Master: All of the testimony of Simpson, Preiss and Mayer is in this case.

Mr. Chambers: Over our objection and exception.

The Master: The record shows it.

Q. Mr. Edgerton, was there any surrebuttal testimony put in in the old case as to the testimony of Mr. Mayer and Mr. Simpson, in rebuttal?

Mr. Ransom: Objected to as incompetent and
46043 immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Were you allowed time to present in surrebuttal answers and criticisms of the rebuttal testimony of Messrs. Simpson and Mayer in the prior suit?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Edgerton, what have you got to say in answer to Mr. Simpson's testimony at page 3889 of the old record, that your statement that frost does
46044 not interfere with service pipes when the mains are shallow, does not seriously affect them, he does not agree with?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Where they have referred to you speaking about shallow mains, in connection with your appraisal of mains of the complainant company in the prior case, is it a fact that you suggested any shallow mains?

Mr. Ransom: Objected to as incompetent and not surrebuttal.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. At what depth did you estimate the cost of laying the mains?

Mr. Ransom: Objected to.

The Master: We have got all that. 2-1/2 feet to the bottom of the trench and 2 feet to the top of the main

Mr. Ransom: He cannot now contradict his prior testimony.

Mr. O'Brien: Exception.

Q. How did your estimate vary, the depth of the excavation? 46046

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Edgerton, what is your answer to the criticism of Mr. Simpson, pages 3893 and 3894, as to the weights of pipe, he saying that you took a lighter weight?

Mr. Ransom: Objected to as incompetent and fully covered. His appraisal on these matters shows what he did.

The Master: What do you mean, he took a lighter weight than what?

Mr. O'Brien: Than Mr. Simpson says the company had. 46047

The Master: Did you take a lighter weight?

The Witness: Yes, I did, old mains, because I knew they were lighter.

Mr. Ransom: I object and move to strike out the statement "I knew they were lighter."

The Master: I will let it stand.

Mr. Ransom: Exception.

Mr. O'Brien: How can anybody testify that he had knowledge of the mains that went into the ground? He knows what the pipes were sold for.

Mr. Ransom: He has as much knowledge of these mains as he has of mains in Patagonia.

Mr. O'Brien: I am going to ask that that remark be stricken from the record.

The Master: No, you brought it on yourself. Next question.

Mr. O'Brien: I brought it on myself?

The Witness: Let me give them a line of questions to ask; they are getting nowhere.

The Master: No. Mr. Edgerton has testified that he did take lighter weights for some old
46049 mains, because he knew they were lighter. Next question.

Q. Does that statement apply particularly to certain classes of mains?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. I will not take any more of it.

Mr. O'Brien: Exception.

Q. Was Mr. Simpson correct in his statement at page 3895 of the record, Mr. Edgerton, that he had figured on a short ton in every case in connection with the estimate of the cost of mains?

Mr. Ransom: Objected to as incompetent.

46050 The Master: I will take a yes or no answer to that, to be done with it. Was he correct?

A. I do not know what he said yet. I am trying to get at it.

Q. Where he said at page 3895:

"Q. Now, Mr. Edgerton, at page 4042 of his testimony, in explaining some discrepancies, as I understand it, stated that he figured his calculations on the short ton at 28.90, and that you figured the long ton at the same price. Is that correct?

"A. No, sir."

Mr Simpson answered:

"A. No, sir."

46051

The Master: This is not rebuttal.

Q. (Continued):

"Q. What is the fact?

"A. I figured on a short ton in every case. In no part of my testimony did I mention the long ton at all."

The Master: Objection sustained to that.

Mr. O'Brien: I want to ask Mr. Edgerton to explain the methods used by Mr. Simpson.

The Master: No, the objection is sustained.

Mr. O'Brien: And the weights that were used by him. Exception.

Q. Mr. Edgerton, in general, in what other respects did Mr. Simpson criticise your testimony and your appraisals of the mains? 46052

The Master: Objection sustained.

Mr. O'Brien: Your Honor does not want me to ask these questions in detail, and you do not want to allow me to ask them in a few general questions.

The Master: The net result is that I do not want you to ask them at all.

Mr. O'Brien: May I go through the testimony of Mr. Simpson in the same way that Mr. Simpson was allowed to criticise and characterize the testimony of Mr. Edgerton? 46053

The Master: No, I won't take it.

Mr. O'Brien: Then if you will make your ruling and state that you are not going to permit me to ask a similar line of questions in the same form in which they were put to Mr. Simpson about Mr. Edgerton's testimony, why I will take my exception and stop.

The Master: I thought I had made that ruling half a dozen times, and expressed myself very strongly about it.

Mr. O'Brien: I take exception to your Honor's ruling, and I say now for the purpose of the rec-

46054

ord that I propose to take the testimony in rebuttal of Mr. Simpson, wherein he attempts to criticise the testimony of Mr. Edgerton and to argue concerning various estimates and methods of making estimates of Mr. Edgerton, and ask Mr. Edgerton questions in the same form as those put to Mr. Simpson, concerning Mr. Simpson's testimony and his appraisal. For your Honor to rule on it I make that proposition now.

The Master: No, I will not take any such offer.

Mr. O'Brien: And I take exception to your

46055 Honor's ruling.

The Master: Mr. Simpson testified, as I understand it, on the prior trial; Mr. Edgerton followed him, or criticised some of the figures given by Mr. Simpson; Mr. Simpson came back in rebuttal and said that Mr. Edgerton was wrong in his testimony about him, and now you want to keep on in an endless circle.

Mr. O'Brien: I want a surrebuttal.

The Master: No.

Mr. O'Brien: I want the privilege of putting in here what was not in the old case.

The Master: It won't go in.

46056 Mr. O'Brien: I want to show that these criticisms were not well founded and that the objections made to Mr. Edgerton's testimony were misleading and confusing.

The Master: You have to show it in the record. You have to point it out in the record and not have the witness argue about Mr. Mayer's testimony or Mr. Simpson's testimony the way Simpson was allowed to talk about Mr. Edgerton.

Mr. O'Brien: I want the witness to be given just the same freedom with regard to the rules

of evidence that was given to Mr. Simpson, and Mr. Mathewson examining him, in the prior suit, and if your Honor will not allow similar questions to be asked of Mr. Edgerton about Simpson's method of appraisal, then I move to strike out the whole of the testimony of Simpson in rebuttal. 46057

The Master: Motion denied at this time.

Mr. Chambers: With emphasis on the words "at this time."

The Master: Yes, I have repeatedly said I will hear motions to strike out later.

Mr. Ransom: Does Mr. O'Brien object to counsel consulting with his witness during the pendency of his examination? 46058

The Master: I do not know, but if he does I will overrule his objection and permit him to confer with his witness. Is that all now for Mr. Edgerton?

Mr. O'Brien: Your Honor, this record is not complete until I have it clearly understood whether or not you are going to allow the witness, in answer to the rebuttal testimony of Mr. Simpson, to explain in brief terms the method that he used. Now, I suppose in a couple of questions and answers Mr. Edgerton could clear that up and then you will have the record complete so far as they differ on these questions. 46059

The Master: I think I have made my ruling perfectly clear. There is no use wasting any more time.

Q. Mr. Edgerton, will you explain the method adopted by you in appraising the mains of the complainant in the prior suit?

Mr. Ransom: Objected to as incompetent, not surrebuttal, fully covered on the defendants' case.

The Master: Objection sustained.

Mr. O'Brien: Exception.

4444

Mr. Ransom: Will Mr. O'Brien again object to his conferring with the witness? I want that statement on the record.

Mr. O'Brien: Cut that out now, Mr. Ransom. The record is complete. The Master is not going to allow the testimony, what is the use?

Your Honor, were you under the impression in making these rulings that Mr. Edgerton had an opportunity in coming in for the defense, of criticising Mr. Simpson, and therefore he should not be allowed to do it in surrebuttal?

The Master: I do not think I will get into a

4445 discussion with you, Mr. O'Brien, about it.

Mr. O'Brien: I want to just have a clear cut record so I won't have any misunderstanding about it, that your Honor does not allow me now to pursue the same line of inquiry with this witness in surrebuttal as was allowed respecting Mr. Simpson in his rebuttal examination, of taking up various items—where he took up various items of Mr. Edgerton's testimony and attempted to characterize them, using his own adverbs and his own adjectives and his own description, calling them erroneous, and all that, and so on. I submit that that same opportunity should be

4446 allowed us at this time, and I take an exception to the ruling, which I assume your Honor is making now, which denies me that privilege.

The Master: I see no necessity for making any further statements on this subject-matter, and the record speaks for itself.

Mr. O'Brien: Exception. That is all, Mr. Edgerton.

Mr. Ransom: Before Mr. Edgerton leaves the stand, Mr. O'Brien got on to this record yesterday this insinuation that there had been some increase in pressure on the district during the month of December, 1919, as compared with

46063

December, 1918. I have got here all the pressure charts the 33 districts, the 33 square miles, 20 of them, the charts under the Public Service Commission order, 13 of them are the company's. Here are all of them for 1918 and 1919. The 11 which Mr. Edgerton asked for and got and the 22 others. They show a slightly lower pressure.

The Master: No.

Mr. Chambers: I object to that.

Mr. Ransom: Well, Mr. O'Brien made the statement that they showed higher.

46064

The Master: No, the statement that they show anything is stricken off the record.

Mr. Ransom: Will you strike out Mr. O'Brien's statement physically?

The Master: And any statement Mr. O'Brien has made that the pressure was higher or lower in 1919 than it was the corresponding month of the previous year is stricken off the record, if it is on.

Mr. Ransom: Physically?

The Master: I cannot strike things off physically; I can only make a simple ruling to cover it.

46065

Mr. Chambers: Any more than you can strike out Mr. Woods' testimony.

The Master: One of the reasons I would not permit Mr. Edgerton to say it was higher in December, 1919, than it was in December, 1918, was because the charts, the pressure charts, were the best evidence of it. The pressure charts are here and if counsel wants to prove that fact by these charts I will let him prove it now.

Mr. O'Brien: Your Honor, I want to have you understand this, that when these records were brought up here, where I requested certain charts

4666

to be brought in, it was to bring out from the witness that they were handpicked so far as the charts afforded Mr. Edgerton were concerned.

Mr. Ransom: Well, they are all here.

The Master: I do not want to hear any more about it.

Mr. O'Brien: When he called for the charts he was given certain selected, handpicked charts.

Mr. Ransom: He asked for some.

Mr. O'Brien: That is what I wanted to prove.

Mr. Ransom: Mr. Edgerton asked for some in December, 1918, and December, 1919. He was

4667 given the charts for—

Mr. O'Brien: He asked for all of them.

Mr. Ransom: He was given 11 of them at random.

The Master: I do not want to hear any more on that. There appears on the table here a big stack of charts. The statement is made by Judge Ransom as to what these charts are. I do not know myself, but I assume the statement to be correct. If Mr. O'Brien wants to use these charts and put them in evidence for December, 1918, and December, 1919, and there will be no objection on the part of the complainant's counsel, I

4668 will take them. If there be objection on the part of complainant's counsel, I won't take them.

Mr. Ransom: There will be no objection.

Mr. O'Brien: Your Honor, he is not producing somebody here, some witness to prove them.

Mr. Ransom: I have the witness.

Mr. O'Brien: Some one who is accountable for these charts.

Mr. Ransom: I have the witness here who is accountable for them and in whose custody they have been ever since they have been taken off the recording gauges.

46069

Mr. O'Brien: I undertook to examine my witness with regard to this whole situation, and I was prevented from doing it by the rulings of the Master. I undertook to prove what I said, that the registers there, the records, they recorded pressure—

Mr. Ransom: You tried to prove something about the stations, which has nothing to do with it. The question is what is the pressure out on the district.

Mr. O'Brien: I was trying to prove something and was not allowed to get across the threshold with it.

46070

Mr. Ransom: The Commission has divided up the territory into 33 districts, 33 square miles, and these show the pressures on the districts.

Mr. O'Brien: I object to that. Let him produce the witness.

The Master: There is not any testimony in this case that there is any pressure regulation, that I know of.

Mr. Ransom: Mr. Hine said there was a Commission order.

The Master: But he did not say what it was, and it is not in evidence. That is the reason I ruled it out. I say if counsel for the complainant has no objection to these charts being offered in evidence by Mr. O'Brien, and to give Mr. O'Brien an opportunity to show, if he can, that the pressure on the district in 1919, in December, was higher than in 1918, in December, I will let him go on and show it. I cannot say any more about it.

46071

Mr. Ransom: The complainant not only does not object to having these 33 charts of the different districts put in evidence, but the complainant requests it.

46072 Mr. O'Brien: I have not seen these charts that are produced here this morning; Mr. Edgerton has not had a chance to examine them.

Mr. Ransom: Well, I will take the ones that he did examine.

Mr. O'Brien: Well, take him and cross-examine him if you want to. There is my witness, there is my assertion.

The Master: I am not going to permit any cross-examination, because there is not any evidence on which there can be any cross-examination.

46073 Mr. O'Brien: Your Honor made a ruling when I undertook to ask the witness what he observed as a gas engineer in the works of the company at 14th and 42d Streets, and refused to allow me to bring out what he saw.

The Master: The record shows what I said.

Mr. O'Brien: To bring out his engineering conclusions as to what he saw.

The Master: The record shows what I ruled out.

Mr. O'Brien: I make that assertion, and I am ready to back it up, if you will open the door and let me ask the witness questions as to the

46074 examination which he, as an engineer, made both as to the company's office and the works.

Mr. Ransom: Which has nothing to do with it.

Mr. O'Brien: He asked for the records and got a few handpicked records, and he went to the works—

The Master: I have heard all I want to hear about it. I understand counsel for the defendants do want to offer in evidence the charts?

Mr. O'Brien: Where are we at? Is he now on cross examination of the witness?

The Master: No, you are excused, Mr. Edgerton.

Mr. O'Brien: If I am back on the examination I will open up the examination as to the pressures.

The Master: No, there is only one question I want you to answer, and that is whether you contend that the pressure on the districts, as shown by the pressure gauges during 1919, was greater than in 1918.

Mr. O'Brien: I do say that, that is my contention. 46076

The Master: All right, then I will let you put in the pressure charts from the gauges, to prove it, if you want to. If you do not put them in I shall assume that you cannot prove what you say.

By Mr. O'Brien:

Q. Mr. Edgerton, will you take the papers that are produced here and tell me whether they were turned over to you when you made your request for the pressure charts on your visit to the office of the complainant company?

The Master: Objection sustained. I am not going into that question. 46077

Mr. O'Brien: You do not assume, your Honor, that I could take charts that they produced here and go at it blindly, and offer them in evidence?

The Master: No.

Mr. O'Brien: Without asking my witness whether they were ever turned over to him or not?

The Master: That is not the point. He can look at them now; you can look at them now I will give you half an hour to look at them.

The Witness: I can tell you in a minute, that does not exhibit the state of the pressure of the

distributing mains. You have not got a single one where the pressure is regulated on the mains

Mr. Ransom: These are the ones where they are regulated on the mains (indicating). He had 11 out of the 20.

Mr. O'Brien: Your Honor, I have to object to this irregular method adopted by the complainant's counsel.

The Master: Yes. Sit down, Mr. Ransom; sit down Mr. Chambers.

Mr. Ransom: Sit down, Mr. O'Brien, also?

46079 The Master: He is examining the witness now.

Q. Mr. Edgerton, I hand you the package of charts that were produced yesterday and ask you if they, so far as you remember, were the charts handed to you when you made a request for all the pressure charts for December—

The Master: I have ruled that out half a dozen times; I do not care whether they were or were not.

Mr. Ransom: He answered that those were yesterday.

The Master: I do not care. Let us stop that.

46080 It is eliminated once and for all.

Mr. O'Brien: But, your Honor, I want him to make the record and have your Honor know.

The Master: I do not care anything about it, and I won't allow it.

Mr. O'Brien: When he called for pressure charts, those are the ones they gave him, and they did not give him all of them. I want you to know that.

The Master: I do not care anything about it I am not going to try that issue here.

Mr. O'Brien: Wouldn't that show the disposition of the company?

The Master: I do not care anything about it.

Mr. O'Brien: Wouldn't it show their lack of disclosure; wouldn't it show the effort to conceal them from the witness?

Mr. Ransom: That statement is absolutely incorrect.

The Master: Ask another question.

Mr. O'Brien: I take exception to your Honor's ruling. I asked the witness whether these were the pressure charts.

The Master: And I have ruled it out.

Mr. O'Brien: And I take exception 46082

The Master: Why must you keep repeating it when I have ruled it out?

By the Master:

Q. What are these charts that have been shown to you, Mr. Edgerton; what are they?

Mr. O'Brien: Just a minute, he has got to examine them, your Honor.

The Master: He has been telling here in an undertone so the stenographer did not get it, what they were, now I want to know what he said.

A. I requested charts—

Q. No, I do not care what you requested. What 46083 are these charts that are produced?

A. They are not the charts I requested.

Q. What are they?

A. They are picked. I say they are not the charts that show—

The Master: Do not take another word until I tell you what to take down, Mr. Stenographer.

(Off the record.)

Q. What is this chart that I show you here (indicating)?

Mr. O'Brien: I submit that the witness be given some opportunity to go over them. There

must be 300 charts here—or two or three hundred.

A. 122 Bowery.

Q. What does that mean to you?

A. That means that it does not record the pressure—

Q. What does it mean, not what it does not mean?

A. In that particular spot.

Q. Yes, it shows the pressure at that particular spot; is that the idea?

Mr. O'Brien: I submit that the Master should not be irritated and yelp at the witness.

46085

The Master: I am going to get my answer and get through with it.

Mr. O'Brien: I want the record to show the way you are yelling at the witness.

The Master: You have to stop it.

Q. Does that record purport to show the pressure at 122 Bowery?

A. Yes, that is right, the required test for gas.

Q. For what date?

A. I have only examined this one, 122 Bowery office; it is the office where the Consolidated Gas Company has a testing station.

46086 Q. For what dates is that bunch that I show you?

A. (No answer.)

The Master: Let me have it; I can tell you.

Mr. Ransom: It shows right on the face. It is printed.

The Master: The Master states that on the face of these charts, this bundle that I have shown the witness, they run, the first one from Monday to Tuesday, December 1, 1919, to December 2, 1919, the last one being from Tuesday to Wednesday, December 30, 1919, to December 31, 1919.

Mr. Ransom: That being a test for square mile 2.

Q. What is this bundle that I show you (handing witness)?

A. 208 79th Street.

Q. That means what, a pressure gauge or chart at that particular point?

A. Yes, sir.

Q. That covers the period, this bundle, from Monday, December 1, 1919, to December 31, 1919. Here is another bundle that is marked "79th Street station, 44th Street, square mile 10," and apparently the first one is December 1, 1919, and the last one December 31, 1919. All of these charts appear to be 46088
from various spots around the city, do they not?

A. Yes, they are in spots, but—

Q. Indicating pressures on the mains?

Mr. O'Brien: Allow the witness to answer, your Honor.

The Master: Are you going to let me ask a question?

Mr. O'Brien: I want you to let him put on the record his statement that they do not show the pressures out on the mains, and the reason for making the statement.

Q. Do they show the pressures taken at various points around the city? 46089

A. Yes, sir.

Q. On the mains?

A. Yes, sir, but it does not show the pressures that are required to get the gas. They are intermediates, that is what they are.

Q. What do you mean by "intermediates"?

A. The Bowery is a good ways from where they regulate the pressure.

Q. But there are thirty-three different stations here. Mr. Ransom says—thirty-three different spots around the city. What else did you want?

A. I wanted the regulating pressure, where they turn it on and control every stop-cock in the city.

Q. You mean at the works?

A. Yes, sir.

Q. You wanted some pressure at the works, some pressure chart at the works; is that what you want?

A. Yes, sir.

Q. The pressure charts here on the table are the charts showing the pressures at thirty-three different points on the mains, throughout Manhattan Island, are they, or purport to, I mean?

46091 A. Yes, sir.

Q. But that is what you want?

A. No, sir, I never asked for those.

The Master: Anything else, Mr. O'Brien?

By Mr. O'Brien:

Q. Mr. Edgerton, did you request the charts at the—

The Master: Do not answer this question, Mr. Edgerton.

Mr. O'Brien: What is the use of my asking the question, then?

The Master: There is no use of your asking the question; I have ruled out your inquiry a dozen times as to what this witness asked for. I do not care what he asked for.

46092

Mr. O'Brien: Well, you won't permit me to have the witness describe what he saw?

The Master: No, because I say it is immaterial.

Mr. O'Brien: On his examination in the works at 14th Street and 42nd Street?

The Master: I say it is utterly immaterial.

Mr. O'Brien: Then you are going to stake your judgment as a gas engineer against this witness?

The Master: I say, as the Master in this case,

46093

that it is utterly immaterial to me what this witness saw at the works, if your contention be that the pressure in the mains throughout the city was not that required by the consumer. I do not care what he saw at the works; I want to know what in fact was the pressure in the mains at the various points in the system on the streets. That is all I will take.

Mr. O'Brien: The witness did not ask for the charts—

The Master: I do not care what he asked for.

Mr. O'Brien: Then you had better conduct 46094
the examination of the witness, your Honor.

The Master: Then you have nothing else?

Mr. O'Brien: If you are going to start to break up my questions, what is the use of my proceeding?

The Master: Have you anything else to ask this witness?

Mr. O'Brien: I want to bring out from the witness the statement that he made as to the pressures at which the company used to send this gas out on the district.

The Master: I won't take it.

Mr. O'Brien: That is what I want. 46095

The Master: I will take proof of what the pressure was on the district; I won't take proof of what he saw at the works.

Mr. O'Brien: I am not going to get into the question of these charts; the witness did not examine them before they were produced.

The Master: But he can examine them.

Mr. O'Brien: There is no witness produced to show they were correct.

The Master: I do not care anything about it. Have you anything to ask this witness?

Mr. O'Brien: I am not proving the complainant's case your Honor.

The Master: Have you anything to ask this witness?

Mr. O'Brien: I think you asked the question about comparison between December, 1919, and December, 1918.

The Master: I did not.

Mr. O'Brien: Well, that question, I assume, you are going to rule out.

The Master: I know I will. You will com-

46097 pare it by the charts and only in that way. That is the only way he would know.

Q. Mr. Edgerton, was the works, the governor house which you visited and concerning which visits you started to testify yesterday afternoon—were charts kept there showing the record of the gauges?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Q. At the time of your visits?

The Master: Objection sustained.

Mr. Ransom: The pressure on the district is what determines the pressure that is given the gas of consumers.

46098 The Master: I have made it perfectly clear, Mr. O'Brien.

Mr. O'Brien: You can make your ruling now, and make your final ruling.

The Master: I have made it.

Mr. O'Brien: I want this witness to tell you what he saw, to give his engineering knowledge of how pressures are used, to tell you and interpret for you the showing made on the gauges at the works he visited.

The Master: I will not take it.

Mr. O'Brien: So far as the consumption of gas is concerned.

The Master: I will not take it.

46099

Mr. O'Brien: And also what the comparison between the same records means; at least what the records of pressures for 1919 with 1918, in the same month, means.

The Master: Where are the records?

Mr. O'Brien: And the deductions to be made from it.

The Master: Where are the records?

Mr. O'Brien: The witness will testify.

The Master: Where are they here?

Mr. O'Brien: They have not produced any records here from the governor houses.

46100

The Master: Then I will not let him testify to what they show, and I do not care anyhow.

Mr. Ransom: These are what you subpoenaed, the pile that we had here yesterday. You described them in your subpoena and they are here, and the witnesses identified them.

Q. Mr. Edgerton, if these charts here were accurately kept, and if they showed at the points mentioned, correctly the pressure at the points there in the mains, would they show or indicate pressure at the governor houses where the pressure is controlled?

Mr. Ransom: Objected to as immaterial and incompetent.

46101

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. If these charts which they have thrown here on the table in bunches, purporting to be the records of pressures made by this company at certain places in the city during the month of December—

The Master: Just to interrupt you, Mr. O'Brien, I think the record should show that they appear to be charts of some automatic registering machine.

Mr. O'Brien: Yes.

Q. Would these charts, if accurately made, assum-

ing that the automatic recording devices were in good condition, mathematically correct, and that the records were correct representations of the pressures at these points—would they indicate at what pressures the gases delivered to the consumers?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: The witness is a qualified gas engineer, your Honor.

The Master: I sustain the objection.

Mr. O'Brien: And he can give you his engineering opinions.

46103

The Master: I will not take it.

Mr. O'Brien: All the way through this case you have asked the men for opinions. You have sought even when they were under cross-examination—

The Master: I have made my ruling, do not argue it with me.

Q. Mr. Edgerton, if on a visit to the works at 14th Street and 42nd Street you determined the pressures of the gas being sent out from those stations, and if your determination of the pressure at those points be accurate, are you able as a gas engineer of sixty years' experience to say what would be the pressure of this gas when delivered to consumers of the company at a radius of one mile, two miles and three miles, and so on?

46104

The Master: Is that your question?

Mr. O'Brien: Yes, sir.

Mr. Ransom: Objected to as incompetent and speculative.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Mr. Clark: Exception.

Q. Will you state what factors, if any, would enter into an engineering judgment upon the question that I have just propounded to you?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Mr. O'Brien: Exception.

Q. Are there not well known engineering rules and principles that apply to the subject-matter of those questions?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Clark: Exception. 46106

Q. Assuming that you found during the month of December a pressure at the 14th Street station of twelve inches, and that your finding was accurately made, what would be the pressure of that same gas delivered to consumers one mile away?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Two miles away?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Three miles away? 46107

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. And at radii of from three to ten miles?

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. O'Brien: That is all.

The Master: All right, Mr. Edgerton, you are excused. Have you got these statements that Mr. Woods said he would have here this morning? You do not need Mr. Woods, just give the statements to Mr. O'Brien; he called for them.

Mr. Ransom: I want to have Mr. Woods now verify those figures which he gave yesterday at page 14917 of the record, on the maximum day's sendout in those different years.

Mr. Chambers: No, he struck that out.

Mr. Ransom: Well, he has now checked them.

The Master: It is included in this statement, is it not?

Mr. Ransom: No, it is not.

The Master: Why isn't it?

Mr. Ransom: Because what they asked for
46109 was the sendout and make by days, December, 1919, January, 1920, and February, 1920.

The Master: And?

Mr. Ransom: What you struck out was the maximum day's sendout for each of those years, from 1906 on.

The Master: I remember. All right. Mr. Woods.

Mr. Chambers: I object to opening up the complainant's case again, if the Master please. I object to reopening the case.

The Master: Objection overruled.

Mr. Chambers: Exception.

46110

RE-REBUTTAL.

GEORGE E. WOODS, recalled by the complainant in re-rebuttal.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Woods, at page 14917 of the mimeograph record of yesterday, you gave certain figures for the maximum day's send-out of the Consolidated Company for each year from 1906 to the present time, that

is each winter since 1906, and you stated certain figures as representing your recollection and information on that point—

The Master: No, not his recollection.

Q. (Continued.) Well they were subsequently stricken out because you had not at that time checked and verified those from your own records in the engineering department. Have you since yesterday's session personally checked each of those figures with your records?

Mr. Chambers: I object as not proper. It is improper for the complainant to patch up its case at this late date. 46112

The Master: Objection overruled.

Mr. Chambers: Exception.

A. I have.

The Master: Are they correct?

The Witness: They are.

The Master: All right, the motion to strike out will be denied and the ruling made with reference to it before will be reversed.

Mr. Clark: Exception.

Mr. Chambers: I object to that ruling.

The Master: All right, you are excused, Mr. Woods. 46113

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal, no foundation laid for it, and I take an exception. It is hearsay and secondary evidence.

The Master: Mr. O'Brien, here are these statements. Do you want to offer them in?

Mr. Chambers: Has the complainant rested now for the third time?

The Master: I will find out in a few minutes.

Mr. Chambers: I think we ought to know the psychological moment at which the complainant rests.

46114

Mr. O'Brien: I am going to ask is Mr. Woods out of the chair?

The Master: No, I am not going to have Mr. Woods examined as to those.

Mr. O'Brien: All I want is to let the record show that I am asking him in cross-examination—

The Master: To produce certain figures.

Mr. O'Brien: The alleged maximum—the alleged sendout for the days that he omitted, in the months of December, January and February.

The Master: You asked for a certain state-
46115 ment on the record. That statement has been prepared for you. Do you want to offer it in evidence?

Mr. Chambers: I hope you are not overlooking the fact that I want to examine Mr. Woods on these papers that have been slipped in here at this late date.

The Master: If you have any objection to Mr. O'Brien putting that in as part of his cross-examination, I will sustain that objection.

Mr. Chambers: Not only that, but Mr. Woods has come on here and he has gone off without any cross-examination.

46116 The Master: I am not going to permit any more cross-examination.

Mr. O'Brien: Well, this shows the tricky way they have of doing business. He has not produced what he was asked to produce.

The Master: What has he not produced? What hasn't he got?

Mr. O'Brien: They will put him out of the room all right. I suppose they got him on his way to the gas works.

Mr. Ransom: He is right back of you, back of you every minute.

46117

Mr. O'Brien: They talk about how they always put everything at our disposal—they have given us a room and they have given us everything that we want.

The Master: Mr. O'Brien, I am not going to hear any more talk or discussion today. The time is getting too short.

Mr. O'Brien: You say they have brought in the tables I wanted and I say they have not.

The Master: Show me what is missing.

Mr. O'Brien: I have a right to look at this record, and nobody is going to choke me at the end of this case, or the beginning of it.

46118

The Master: You could look at it in the time we are talking about it.

Mr. Ransom: There was one part of his request that was so vague, I am not quite sure—

Mr. O'Brien: Yes, it was so vague—and I repeated it twice, or three times, so it would not be misunderstood. Your Honor, I ask not only that the witness supply in the testimony which he gave on March 1st—

The Master: On what page?

Mr. O'Brien: On page 14897 of the mimeograph record—the days which he omitted, so that we would have the consecutive send-out—

46119

Mr. Ransom: That is every day.

Mr. O'Brien: For each of the three months, but I asked also for the send-out for every day in the same months, their daily make and the daily send-out of each plant, and that is what has not been produced.

The Master: Yes.

Mr. Ransom: Do you want the daily make of each plant?

The Master: And daily send-out of each plant.

46120

Mr. Ransom: There is no such thing as the send-out of a plant, there is the make of a plant.

Mr. O'Brien: Pages 14897 and 14898.

The Master: What do you mean, there is not any send-out of the plant?

Mr. Ransom: Well, I suppose you could make it up in a way from the stock account, the gas on hand.

The Master: Have you the daily make of each plant?

Mr. Ransom: I have the daily make of each plant.

46121 The Master: Give that to Mr. O'Brien and I shall rule that is enough.

Mr. O'Brien: Your Honor is going to rule that the daily make is supplying me the information I asked?

The Master: Yes, that and the other sheets already produced. I think those three sheets are all the information that you asked.

Mr. Ransom: I shall be very glad to have all three in evidence.

Mr. O'Brien: There must be some error here. I take and compare the statement on the record in Woods' testimony in the mimeograph record at

46122 page 14897, and for December, 1918, they have 95,571 M, they have down here 95,571 cubic feet, while in this paper they hand us they have down 86,024 M, for Consolidated and Astoria Companies.

Mr. Ransom: I would suspect that did not include the Mutual of course. You are looking at the table of gas made by days, Consolidated and Astoria Companies.

The Master: The send-out.

46123

Mr. Clark: Do you mean they send out more than they make?

The Master: They always do—send out more than they make.

Mr. Ransom: That is the reason they have to have the 10,000,000 capacity at the Mutual plant. If Mr. O'Brien will look at the send-out of the Consolidated he will find for that day the figure Mr. Woods gave, 95,571—

Mr. O'Brien: If Mr. Woods will be put on the stand again, your Honor—

The Master: No, I am not going to have it.

46124 Mr. Chambers: I would like to cross-examine him.

Mr. O'Brien: I did not ask for the other columns that are on this sheet.

The Master: Yes, you did.

Mr. O'Brien: I did not ask for the total of other companies and the Consolidated system.

The Master: Yes, you did. Do not argue it, I have read the record. You are looking at one point in the record and not at other points.

Mr. O'Brien: When I started to examine the witness I asked him why they had not brought in the consecutive days of each of the four months.

46125 The Master: Do not take any more, Mr. Stenographer.

(Off the record.)

Mr. O'Brien: I will offer as part of my cross-examination of the witness Woods, conducted yesterday, the paper here which shows the consecutive days, Consolidated Gas Company, the first, second and third columns.

The Master: Mr. O'Brien, in the cross-examination of Mr. Woods, having directed Mr. Woods to produce here certain information con-

46126 tained in the records of the company, and counsel having produced three sheets, one entitled, "Gas Made Thousand Cubic Feet by Days, December, 1919, January, 1920, and February, 1920," the other sheet being entitled "Send-out Thousand Cubic Feet by Days, December, 1919, January, 1920, and February, 1920," and the third sheet being, "Gas made Consolidated and Astoria Companies, December, 1919, January, 1920, and February, 1920," and, "Gas Made Mutual Standard, New Amsterdam, Central Union," and all companies of Consoli-

46127 dated transfer system for those same months, they will be marked in evidence as part of the cross-examination of Mr. Woods.

Mr. Chambers: I take exception. I object and take exception.

Mr. O'Brien: Your Honor, before recording my objection to your offering them in evidence, I call your attention—

The Master: I am not offering them. I am marking them.

Mr. O'Brien: You're marking them in evidence. I call your attention to page 14897

The Master: We will mark them now before

46128 any further objection.

Statement of "Gas Made" marked Defendants' Exhibit AA-524.

Statement of "Gas Made Consolidated and Other Companies" by various plants, marked Defendants' Exhibit AA-525.

Statement entitled, "Send Out Per Thousand Cubic Feet, by Days," marked Defendants' Exhibit AA-526.

The Master: Any objections to the procedure followed by the Master can be spread upon the record.

46129

Mr. Chambers: I object to the Master's marking these in evidence as defendants' exhibits, on the ground it is an incompetent and improper procedure. Exception.

Mr. O'Brien: I call your Honor's attention to page 14897 of the record in which I had the witness Woods under cross-examination and called his attention to the fact that he had given only the scattering days in the several months, as he claimed, send-out of the Consolidated Gas Company. On this page of the record I asked the witness to give us what he claimed to be the send-out of the Consolidated Gas Company for every 46130
day in December, January and February and the daily make of each plant, and the daily send out of each plant, for each one of these days. Now, that did not include the system; there was not anything said about the system, your Honor. The only thing that the witness was asked to supply was the same figures for all of the days of December and January and February, as he supplied for some of the days of those months on page 14897 of the mimeograph record. They have brought in additional data on these pages, and that I will not make part of my cross-examination. The make of each station was part of my 46131
cross-examination.

The Master: If that is an objection it is overruled and exception allowed.

Mr. O'Brien: I except to that extent.

The Master: Is there any other witness that any defendant wants to call?

Mr. Chambers: I want to cross-examine Mr. Woods on his maximum day's sendout from 1906 to the present time.

The Master: You want to examine on matters brought out by Mr. O'Brien on cross-examination?

46132 George E. Woods, Cross.

Mr. Chambers: No, this was matter that was stricken out yesterday on cross-examination and you have let it in now.

The Master: All right, I will let you cross-examine Mr. Woods as to the matter I allowed in.

Mr. O'Brien: My exception, your Honor. My objection is to that part of your Honor's ruling alllowing in evidence data that was not called for in my cross-examination of the witness.

The Master: Yes, you have noted your objection.

46133 Mr. O'Brien: Exception.

GEORGE E. WOODS recalled:

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Woods, where did you get your figures for the maximum day's send-out of the Consolidated? Is that for the Consolidated Company only, for 1906.

A. Yes.

Q. Where did you get that figure from?

46134 A. The foundation is gotten from the sendout of the system in the Engineering Department.

Q. Well, it is the whole system and where you got it from?

A. The whole system, yes.

Q. Not the Consolidated?

A. That is right.

Q. Where did you find any such figure as that?

A. That is a calculated figure which has been testified to, and that is the only means we have of determining sendout of any particular company, the means based upon the ratio of the sales of that company as applied to the system.

Q. And there is not any way, is there—that is what I thought—of finding out exactly what the sendout is of the Consolidated Gas Company, except by somebody making a computation or figuring it out in the manner you have indicated?

A. That is right.

Q. Is that true of all of those different years?

A. That is right.

By the Master:

Q. And it is true as to these exhibits in evidence, where it shows the sendout?

A. That is right, your Honor. 46136

Q. And of separate companies?

A. That is the only way we have of doing it.

By Mr. Chambers:

Q. Who figured this out, these figures here of the maximum days?

A. I figured many of them out.

Q. Did you figure the one in 1906 that you gave?

A. Yes.

Q. Between yesterday and this morning?

A. Yes.

Q. What did you take to figure it out; show me how you did it?

A. Well, I have not the figures with me. It is simply the ratio of sales, as applied to 1906, to the total sales which figures whatever the percentage may be, 59, 60, 61 or 62, I have forgotten what the figure may have been, times the sendout of the system, gives the sendout of the Consolidated Gas Co. 46137

Q. You mean you took the sales of the various companies?

A. That is right.

Q. You had to assume that that was correct?

A. Yes.

Q. You had to assume that the sales of the New Amsterdam were correct?

A. Yes.

46138

Q. And the sales of the Mutual were correct?

A. Right.

Q. And if their sales were incorrect, why, this would be all wrong?

A. It is based on the ratio of sales. It is the only method of the determining the sendout of any company.

Q. To have this correct you would have to examine the books of the New Amsterdam, and the Mutual, and see what their sales were?

A. I examined the records to find what their yearly

46139 sales were.

Q. In other words, to make this computation, you have to have the records of these other companies?

A. That is right.

Q. Well, you cannot say of your own knowledge that these figures are correct?

Mr. Ransom: Objected to.

The Master: That is argumentative. Sustained.

Mr. Chambers: I move to strike it out on the ground that he used papers and documents which are not in evidence.

The Master: Motion denied.

46140 Mr. Chambers: To wit, the books of the New Amsterdam Company, the books of the Standard, the books of the New York Mutual and other companies.

The Master: Motion denied.

Mr. Chambers: Are you determined not to strike it out anyway? It is only an apportionment, an estimate.

The Master: I have made my ruling.

Q. Which ones of these did you check, Mr. Woods?

A. I do not recall. I checked five or six of them.

Q. The rest you did not?

A. I did not check every one, no. I went through those.

Q. Can you tell me the ones you did and the ones you did not check

A. I do not recall.

Q. There are fifteen here.

A. My recollection is that I checked the first and the third and fourth in the last two or three years.''

Mr. Chambers: I move to strike it out on the ground that it is a most unsatisfactory way.

The Master: You have already made that motion. 46142

Mr. Chambers: It appears that he did not check them.

The Witness: I checked the sendout on the system for every one. I did not make the calculation on every one of the others. I am sure they are right and I will—

Q. Who checked the sales shown by the books of the company?

A. The sales were checked, and I checked the sales in the Accounting Department. They are made up from their records.

Q. Did you go and check them?

A. I did. Looked up their sales, yes. 46143

Q. Of each one of the companies, from their books?

A. No, the summation of the sales are in the office of the Consolidated Gas Company.

Q. You took it from there?

A. I did.

Q. Rather than from the books of the company: is that right?

A. That is right where I took it from.

Mr. O'Brien: Your Honor, I call your attention right here to the statement made a minute ago as to the exhibits you are now looking at. Mr. Ransom said that they could not give us the

sendout of each station, it was impossible to get the sendout, they do not keep it.

The Master: Of each station. Is that correct, Mr. Woods?

Mr. Ransom: I said it could be computed from the stock account of gas.

The Master: Except by computing it in the manner that Mr. Ransom has stated, you could not give the sendout of each station?

The Witness: If you will just permit me to explain that, your Honor.

46145 The Master: I do not know whether Mr. O'Brien wants you to explain it.

By Mr. O'Brien:

Q. Answer the question. Is Mr. Ransom correct in stating in reference to the papers which are produced today, purporting to cover the information I asked for yesterday, that they cannot give us the sendout of each station, it is impossible to get that?

Mr. Ransom: I made no such statement. The record will show what I said.

Mr. O'Brien: It would have to be computed?

Mr. Ransom: I said it could be computed from stock account of gas.

46146 A. We can give a sendout from the station, Mr O'Brien. That is, the amount of gas that has been made during the day, plus or minus the amount of stock on hand at seven o'clock each morning. The sendout would not indicate that that station had sent gas to the consumer. Much of it would have been sent into the system and gone into the distributing holders. So, as a matter of determining the sendout to the consumer from any particular station, it would be of no value whatever, because that we do not know.

Q. Then how do you compute your transferred gas? Isn't the total sendout in your Transferred Gas Statistics the total of the sendout of each station?

Mr. Ransom: Objected to. It has been covered at great length two or three or four times.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Yes, it is the total make of each station, plus or minus the stock on hand at the beginning and the end of the month, which indicates the amount of gas that has been sent out at some place or other by that station. The combination of the whole gives the sendout of the system, and then—

Q. Well, I am a bit—I do not understand, Mr. Woods. What do you take, then, for the purposes of 46148
computing your transferred gas figures and your unaccounted for gas, and all that? Do you take the total sendout for a given period of each station and each company?

A. We get the combined sendout of all stations.

Q. The combined sendout. That can be done daily and monthly and yearly.

A. Right.

Q. What computation would it be necessary for you to go through to give us the sendout of each station for these several days in December, January and February which I called for yesterday and which you have not produced today?

46149

A. That can be given you, Mr. O'Brien, without any trouble. The make of that plant—

Q. Why was it not given to me this morning?

A. Because I thought when you had asked for it that you wanted something which was comparable with those fifteen days that I put in. If I should give you anything else the sendout of those stations would not compare at all with the figures put in, and I believed what you wanted—you had fifteen days of maximum and you asked for the sendout for three months on that same basis, as I understood it.

Q. No, I read my question over to you twice and

46150 asked you for the daily make and the daily sendout of each one of these stations, and will you say why you did not produce it?

Mr. Ransom: Objected to, fully answered.

A. I have tried to tell you why. It would be a very simple thing, as a matter of fact—

Q. Why does Mr. Ransom say it was impossible to get it?

Mr. Ransom: I said it would be a matter of computation.

The Master: Please do not interrupt, Mr. Ransom, I am trying to get through here.

46151

Mr. O'Brien: I asked that they be produced.

Mr. Ransom: He persistently misstates what counsel said over and over again.

The Master: Never mind, do not interrupt.

Q. Did you direct anybody to get it?

A. I did. I tell you what actually happened, Mr. O'Brien. When you asked that question I asked them to have that telephoned down to the office and get out that information, and last night I went to the office to make inquiries, and they got it out, as you said you wanted it. I said, "You cannot get it that way, because that is not what Mr. O'Brien wants, even if he

46152 asks for it, because he wants something that will compare with these fifteen days, and what you are putting down means nothing, so we will get it up so that it has some sense to it." The figures had been prepared and I took it upon my own responsibility to assume what you wanted, and put those figures in that I thought you wanted and were relevant, and the others meant nothing.

Q. I see the explanation you make. Couldn't that be figured and produced and delivered to us on March 22nd?

A. Why, yes.

The Master: But it won't be.

Mr. O'Brien: I ask that that be done.

The Master: I decline to grant the request. I do not see any use in it.

Q. Mr. Woods, where you have set down here on page 14407 this sendout of the Consolidated Gas Company, December 18th, say, 95,571 M cubic feet, that does not represent what was consumed that day?

Mr. Ransom: Objected to as fully covered.

The Master: Overruled.

A. That represents the sendout. That represents that calculated sendout that I have just described. 46154

The Master: To Mr. Chambers.

The Witness: Yes, when he asked the question.

Q. Did you prepare any figures in this connection, in connection with these alleged sendouts of each day, any figures showing the consumption on those days as shown by the consumers' meters?

A. Not at all.

Q. Are you able to give us the difference for each day between this alleged sendout in December, January and February and the sum total of the consumers' meters on those days?

Mr. Ransom: Objected to. 46155

The Master: I am going to let the witness answer that question. It seems so perfectly ridiculous to me I would like to have Mr. Woods say so.

Mr. Ransom: We would be very glad to put in the figures for December, January and February.

The Master: Why? How do the consumers' meters daily show how much they use?

Mr. Ransom: They do not.

The Master: Of course they do not.

Mr. Ransom: But he asked about the total of each month.

46156 George E. Woods, Cross.

The Witness: No, he asked me about each specific day here.

Mr. Ransom: No human being could say.

The Master: Do not interrupt, we are trying to get through. Answer the questions, Mr. Woods.

A. No, I had no means of knowing what the consumption of the meters for that day was.

The Master: Is there any person in the world who can tell?

The Witness: Nobody that I know of.

46157 Q. Mr. Woods, you know the average relations between your sales, your daily sales and your sendout?

The Master: We have been all over that. I will not take it.

Q. You could average, could you not—make an average of the daily consumption of the Consolidated Gas Company consumers, if you had accurately taken the consumers' meters, showing us for the days that I have mentioned?

The Master: I won't take that, either. I won't allow the question.

Mr. O'Brien: Exception. Your Honor will not direct them to produce the sendout of each

46158 station?

The Master: No, it is a perfectly useless procedure.

Mr. O'Brien: Are we going to be denied the opportunity of making them prove this total sendout?

The Master: I have made my ruling.

Mr. O'Brien: Supposing they produced records here, or the records may be produced, that show the sendout of each station doe not make up what they show is the total sendout?

The Master: I do not care.

Mr. O'Brien: Why isn't it proper cross-examination to make them produce it?

The Master: I have made my ruling.

Mr. O'Brien: I take exception.

The Master: Mr. Chambers, anything else?

Mr. Chambers: Yes.

The Master: Go ahead.

By Mr. Chambers:

Q. Take December 13, 1915, you have given the figures for the maximum day's sendout you claim for the Consolidated Gas Company alone. What sales did you base that on, the sales as of what time? 46160

A. The 1915 sales would be based on the sendout—or 1915 would be based on the percentage of sales for the year 1915.

Q. But you had not reached the end of the year.

A. 1915?

Q. You gave me a figure here. Not to me, but you stated a figure here of December 13, 1915, 60,312,000. Now I want to know you say now you based that computation on the figures of the sales of different companies to the end of that year?

A. Yes, that computation was made up after the first of the year, and our average sales for that year we knew. The computation was not made as of that 46161 date, the computation was made at some time since.

Q. So you figured a day's sendout here on a given day, but figured it on yearly sales?

A. On the ratio of the annual sales, that is the only way we have of doing it, Mr. Chambers.

Q. And is that true of all?

A. Yes, that is true.

Q. Take this January 31st, 1920, that you claim as the maximum day's sendout. What sales did you base that on?

A. On last year's sales.

Q. 1919 sales?

A. 1919, yes.

Q. And you add that all along through 1920?

A. We do if we want it. It is the best means we have. We can check up any month, six or seven or eight months if we care to do it. That figure is comparable with any one month if you care to go into those computations.

Q. That is the way you did all this?

A. Yes.

The Master: That is all, Mr. Woods. Anything else now?

46163

Mr. Chambers: I move to strike it out as being unsatisfactory and uncertain.

The Master: Motion denied.

Mr. Chambers: And a guess, and immaterial and irrelevant.

The Master: No.

Mr. Chambers: Exception.

The Master: Any more testimony tendered by any party to this action?

Mr. Chambers: Yes, I have testimony, but it is not ready.

The Master: Then the case is closed.

46164

Mr. O'Brien: I make the same statement that I made yesterday, so as to have it appropriately at the end of the—

The Master: What testimony have you got, Mr. Chambers?

Mr. Chambers: I wanted to offer in evidence, if we had time to do it, and we have not had, what we say the books show it cost them to make and distribute gas, what it cost the Consolidated Company to make and distribute gas, and their income from 1906 to 1917 inclusive.

The Master: Yes. The case is closed.

46165

Mr. Chambers: That is only one thing I wanted to show.

The Master: Motions to dismiss and summing up will be heard in this Room 10, Bar Association Building, on Monday morning, March 22nd, at 9:30 in the morning.

Mr. Chambers: I have already apprised the Master of my position, that there will not be time enough for me to get ready for summing up. Exception.

Mr. Clark: Exception to your Honor's setting the day.

Mr. O'Brien: Exception to the closing of the case. 46166

Mr. Chambers: Exception on my behalf to the summary closing of the case.

The Master: Have I heard a remark about the summary closing of the case? The Master, in view of the statement made by Mr. Chambers, again gives the opportunity to any of the counsel for the defendants to put in any other proof that he wants to offer.

Mr. Chambers: But you heard us say we have not had time.

Mr. O'Brien: Your Honor, I made my statement yesterday, and I will ask that it be read into 46167
the record as of today—the statement I made yesterday when we thought we were drawing near the end of the session. In other words, the request for further time to properly prepare the defense—time of at least three weeks.

The Master: You will please note that this court stands adjourned to Monday morning, March 22nd, at 9:30 in the morning, and that means that nothing further shall be taken on the record.

Adjourned to Monday, March 22, 1920, at 9:30 A. M., same place.

Last Complainant's Exhibit 501.
Last Defendants' Exhibit AA-526.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 46171

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 22, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 46172
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Clark: If your Honor please, Dr. Weber finished on Saturday the table showing our claims of their cost from 1906 to 1917. I would like to offer that in evidence.

The Master: It is simply a tabulation?

Mr. Clark: Yes. 46173

The Master: Based on evidence in the record?

Mr. Clark: Yes, it is similar to the one for 1918, but applies to all the years from 1906 to 1917.

The Master: No, I won't open up to take it. If it is based on the record, I will take it for my information, but I will not take it as an exhibit.

Mr. Clark: I take an exception to your Honor's ruling.

Mr. Chambers: I except.

Mr. Clark: The ruling would be the same if I called Dr. Weber, I assume?

The Master: Yes, certainly.

46174

Mr. Clark: Exception.

The Master: I suppose the first order are motions to dismiss.

Mr. Chambers: Or corrections of the record.

The Master: Are there any corrections to be made in the record?

Mr. Chambers: Yes.

The Master: Well, let us have the corrections first.

Mr. Ransom: I don't know that we are able to do that completely at this time, because the record is not completely printed.

The Master: I think, perhaps—these corrections
46175 in the record are simply typographical errors in the main?

Mr. Chambers: Largely.

The Master: Let us pass that. We can, I think, dispose of all the other matters, and while I am taking the matter under consideration and getting a report ready, counsel might agree among themselves about many of these corrections and save a lot of time. I will hear motions to dismiss.

Mr. Clark: Those tabulations of the candle power tests 1916 to 1919 are ready, they were just finished on Saturday. I don't know whether you want to put those in evidence or not.

46176 The Master: No, I will take them simply for convenience. They are supposed simply to tabulate or reflect the papers in evidence?

Mr. Clark: Yes.

The Master: I will take them for the purpose of reference. They don't prove anything more than the exhibits themselves prove.

Now, Mr. Chambers, you have made motions to dismiss several times, and I told you to reserve them until the close of the case, and any motions to strike out ought to be made now.

46177

Mr. Chambers: Which comes first, motions to strike out or motions to dismiss?

The Master: I think motions to strike out come first. I am going to reserve decision on all motions to strike out, but I would like to have the motions put in the record so I can have before me the claims of the defendants in that regard.

Mr. Chambers: I move to strike out the table found on pages 2819 and 2820 of the record, folios 8455, 8456, 8458 and 8459.

These are tables showing occupancy of the floor areas in the general office building as of January 1, 1919, and the same for January 1, 1918.

46178

The ground of the motion is that the witness Stark testified that he obtained his information, or at least some of the information, from the chief operator of the New York Telephone Company, and that he based the information upon that, together with other matters. The girl who furnished him the information was not called, her name was not given, and no other information was furnished in regard thereto.

The Master: What information is that you refer to, Mr. Chambers?

Mr. Chambers: The number of telephone extensions, etc. She was not called.

Also on the ground that the witness Stark, in making up this statement used hearsay statements furnished him by the other companies in regard to the quota of restaurant space for each of these companies. Upon that I quote what the Master said at folio 8441, as follows:

46179

"The Master: So that your apportionment is made upon statements made to the company by these other companies?

"The Witness: That is correct.

"The Master: On that basis, and solely upon this hearsay statement of the other companies, you can

46180

read off what your figure is, the quota of restaurant space for each of these companies and is included in its rent the quota of restaurant space charged to these various companies."

There are other grounds, but I am satisfied to rest on those.

The Master: I would rather have you state any other grounds you have. I think if there are any other grounds they ought to be spread on the record so the Court can have it.

Mr. Chambers: A further ground would be that he based his information upon leases which were not

46181 in evidence, and which were never offered in evidence.

The Master: Decision is reserved.

Mr. Chambers: I move to strike out Complainant's Exhibit No. 86 which is a map showing space claimed by the complainant to be exclusively occupied by the Consolidated Gas Company, and which relates to the main office building; on the ground that the witness Stark admitted that he based the exhibit largely upon leases which were not in evidence, and which were never offered in evidence, and also he used a 1-4 scale drawing which was not in evidence in making up the exhibit.

46182 The Master: Decision reserved.

Mr. Chambers: I move to strike out Complainant's Exhibits 188 to 200, inclusive. These are certain books of the complainant company for 1918.

The Master:: Oh, those are the books of account?

Mr. Chambers: Yes. I would like to call the Master's attention to some of the grounds upon which the motion is based.

The Master: You are now addressing yourself to those books of account, Exhibits 188 to 200?

Mr. Chambers: Yes, for 1918 only. I call the Master's attention to the very great confusion that

46183

exists in regard to these books, as shown by the record.

For instance, at folios 5269-5373, the Master announced that he would not consider the books probative as to items of construction work shown for other companies.

At folio 5360, the Master said:

"If I allow the journal in I would only let them in as part of the bookkeeping system for what they are worth, with the mental reservation in my own mind that they are not worth much."

At folio 5369 the Master said:

46184

"Suppose I admitted these books in evidence and said with respect to them that unless those items which required supporting records or vouchers of other companies were in evidence, supported by having those produced and offered in evidence, that I should strike them out? Wouldn't that protect you?"

At folio 5372 the Master said:

"I was wondering whether I could not leave these books in and announce that I would entertain a motion to strike out any item of that character unless they were supported by the production in court of records of other companies."

At folio 5379 the Master said:

46185

"Judge Ransom, I do not believe it is going to be such tremendous and difficult job for you to produce in court the books, vouchers and records upon which these accounts depend, and have them identified by Mr. Brundage as the regular reports, documents and vouchers."

"I mean all the vouchers without calling witnesses for this purpose."

At folio 5458 the Master said:

"I do not believe that Judge Ransom expects me to assume that the charges made here and prices paid for coal were reasonable until he proves it."

46186

The Master: I do not understand that those are grounds of motions to strike out, Mr. Chambers.

Mr. Chambers: You will see in a minute.

The Master: But I want you to state the grounds upon which you make your motion to strike out. We will hear argument later.

Mr. Chambers: At folio 5501 the Master said he would not take the books as proof of the matters set forth

The Master: You see that does not help me a bit, to tell me what I said, that appears in the record.

Mr. Ransom: These detached sentences out of sev-
46187 eral colloquies several days before the defendants stopped talking and let the matter be ruled on, are not very helpful.

The Master: I understand your point to be, Mr. Chambers, that I should not have taken these books in evidence?

Mr. Chambers: Yes.

The Master: That is the ground of your motion to strike out, isn't it?

Mr. Chambers: Yes.

The Master: It does not help me any to point out sentences, isolated statements appearing in the record that way. I have before me now all of the oral tes-
46188 timony and all of the matters and things that were proved in connection with these books, and the question that now remains is whether these books are properly in evidence, or whether they must stay in evidence, or whether they must be stricken out, in the light of the entire record as now before me.

Mr. Chambers: On all the grounds we urged at the time the books were admitted in evidence; upon the further ground that the books were not books of original entry, as stated by the Master at folios 5072-5075; that up to the present time the complainant offered no evidence whatever as to the accuracy and

46189

correctness of the books; that no one was ever called who made entries in the books, for cross-examination, although it appeared that some of the persons who made the entries were presently in the employ of the company and were available for cross-examination; that the books were hearsay, secondary evidence; that the admission of them deprived the defendants of the right to cross-examine not only the persons who made entries in them, but also to cross-examine the persons who made the underlying data which finally found their way into the books; and upon the further ground that from the Master's own statements made at the time, it appears that the books were not competent under any rule of any court that counsel for the defendants ever heard of. 46190

The Master stated, among other things, at the time that they were offered in evidence that he took them, among other reasons, for the reason that books of a corporation of this kind are presumed to be accurate.

Mr. O'Brien: Your Honor, I would like to have it recorded that I am joining in all the motions made.

The Master: I was going to take care of that when he got through. I shall assume that all of these motions made to strike out by counsel for any one defendant, inure to the benefit of all the defendants. 46191

Mr. Chambers: I couple with this present motion the motion made in full by counsel for the various defendants at the time the books were offered.

The Master: Decision is reserved.

Mr. Chambers: I now move to strike out all of the supporting vouchers which relate to the exhibits which I last mentioned, and also all supporting vouchers and data which relate to the subsequent books of the complainant, being the operating ledgers from 1906 to 1917, inclusive.

These vouchers were never produced in court and

46192 offered as exhibits, nor do we know to this day what all of them are, or how they are made up, and they were never formally received in evidence nor marked, and as I say, never offered by complainant's counsel. The Master stated, however, and you will find it at folios 10711-10712, that the Master considers all of the supporting vouchers in evidence.

I have already called to the Master's attention the fact that he said that all the vouchers were in evidence. Now, I call attention to folio 11564, wherein the Master states:

"The Master: If those vouchers are in evidence.

46193 "Mr. Ransom: I thought you had ruled that they are.

"The Master: I have refrained from ruling that they are in evidence. I have said they are in the record. I draw a distinction between saying they are in the record and being in evidence."

At folio 11594, the Master said:

"In that connection I want to say, and in answer to Mr. Chambers, that in my opinion all of the supporting vouchers in the files of the Consolidated Gas Company having any relation or reference to any of the entries in the books of account accessible to these defendants, are as much in evidence as though

46194 they had been offered here and marked in evidence."

Now, this leaves me in considerable doubt, as I think it does everybody else, as to whether they are in. I take it, that they are in, because at folio 10711, the Master ruled that they were in, and at folio 11564, the Master expressed some doubt himself as to whether they were in, and at folio 11594, the Master again ruled that in his opinion they were in.

Now, if they are in, and as I say, they were never offered in evidence, never formally offered in evidence, then I move to strike them out on the following grounds, being substantially the same grounds

46195

urged for the striking out of the complainant's books to which I have referred, that these vouchers are hearsay testimony, and without producing the persons who know of the matters stated in the vouchers, at least for cross-examination, the defendants are thereby deprived of the right of cross-examining these witnesses; that it is secondary and hearsay evidence; that no one was ever called to show or substantiate these vouchers in any way; that we do not know what they are, and that there is no rule that I know of that permits them to be received in evidence in the manner in which they were ruled on in this case.

46196

The Master: Let me get that clear, Mr. Chambers. Take one particular voucher—

Mr. Chambers: There are a few of them that are in.

The Master: Take some voucher that is not in. Let us assume that in the year 1918 the operating ledger shows an item indicating that the Gas Company purchased from the X Company 1,000 brick for $10, and paid that X Company $10 for the 1,000 brick, and that that entry has reference to Voucher No. 1250. The record would indicate that the Master was rather inclined to believe that the book itself carried with it the voucher referred to in the book, and it is that voucher that you are moving to strike out?

46197

Mr. Chambers: To that I say I do not know myself—

The Master: Well, it is that voucher if it is in?

Mr. Chambers: That would be one of them, yes.

The Master: That is the voucher, if it is in, that you are moving to strike out?

Mr. Chambers: There are a lot of them that are not like that. There are a lot of vouchers that are possibly not referred to at all in the operating ledgers. I don't know what is in and what is out.

46198

The Master: I am confining myself now to vouchers referred to in the operating ledgers as the basis of the entry. Your motion would be the same if the voucher had itself been produced and offered as the voucher referred to in the ledger, wouldn't it?

Mr. Chambers: No, I would not quite say that, because that would be a different situation. The voucher was not produced and was not offered nor identified by anybody.

The Master: Suppose Judge Ransom had asked Mr. Brundage or anybody else, while on the stand,
46199 whether this voucher, producing it, marked Voucher No. 1,250, was the voucher referred to in that ledger entry, and identified it only to that extent, that it was the voucher of that number, having the same amount of money and the same name that appeared upon the operating ledger, whatever the ledger is, and that paper had then been received by me in connection with that entry, your motion to strike out would be the same wouldn't it?

Mr. Chambers: I would not say it would be the same. I would move then to strike that out.

The Master: Your motion is on the ground that nobody was called to testify to the facts appearing
46200 on the voucher?

Mr. Chambers: This is very material. No one was called or offer made in this case to show that the coal was bought, or the oil purchased, or that the pipe was purchased, in the quantities as shown in these papers.

The Master: That is just what I wanted to get clear.

Mr. Chambers: I am getting at the lack of connecting up, it lacks the fundamentals, the groundwork. You have the books and vouchers in evidence,

46201

but where is there any testimony from anybody who knows anything about the expenditure?

The Master: This is just what I want to get clear on the record, to get your point. I have assumed for the purpose of my inquiry that Judge Ransom went one step further and identified by some witness a voucher of this number, name of creditor, and amount, with the entry in the ledger. That did not add any strength to the ledger entry, did it?

Mr. Chambers: No.

The Master: Your point is that Judge Ransom should have produced Mr. Jones or Mr. Smith, either of the Gas Company or of the creditor company that 46202
sold the merchandise, and have them show that on a certain day a contract of purchase and sale was made, and show the delivery of the merchandise and the payment of the money, in ordinary common-law form—isn't that your point?

Mr. Chambers: I didn't have that in mind.

The Master: What did you have in mind?

Mr. Chambers: I had in mind that the superintendence of one of these plants should have been produced to let us know that he did receive a certain amount of coal, that he did receive a certain amount of oil, and the superintendent of the Street and Main Department should have been produced, he should have testified that he used pipes— 46203

The Master: Wait a minute, let us talk about this load of brick that I am talking about as illustrative of the point. I am not arguing it, I want to get at your point. Here is a thousand brick that the books show were purchased from the X Company, and ten dollars paid for them, and here is a voucher for it. Your contention is that the superintendent of a plant should have been produced to show that they got that 1,000 brick?

Mr. Chambers: The superintendent or the man

46,204 who handled brick for the company should have been produced, common-law testimony should have been taken, he should have been presented here and sworn and should have testified, and it should appear that that thousand brick was used in the gas making business by the Consolidated Gas Company and not by one of the allied companies and not by somebody else. How do we know what became of the brick?

The Master: That is, you want the Gas Company to show the actual purchase of this brick, don't you?

Mr. Chambers: Yes, I should think they would have to show that.

46,205 The Master: Well, that is your contention, isn't it?

Mr. Chambers: Yes.

The Master: And the fact that that brick was reasonably worth $10, and that the agreement to pay $10 was an honest and fair agreement?

Mr. Chambers: Yes, I think they should have to prove that.

The Master: And that the brick was actually received and delivered?

Mr. Chambers: Yes.

The Master: And that it was actually used for the Consolidated Gas Company's purposes?

46,206 Mr. Chambers: That is right.

The Master: And it is your contention that as to each item in this ledger, whether supported or unsupported by a voucher, that common-law proof ought to have been produced?

Mr. Chambers: That is partly it.

The Master: That is the gist and the heart of your motion, isn't it?

Mr. Chambers: Partly, yes, sir.

The Master: What else is there? Doesn't that go to the very meat of it?

Mr. Chambers: Fundamentally, none of these

46207

books and none of these vouchers should have been admitted in evidence—

The Master: Without that proof?

Mr. Chambers: Well, without proof that the books were made in the ordinary course of business.

The Master: I am talking about your motion now to strike out a voucher that I have assumed was in evidence as supporting a ledger entry showing 1,000 brick purchased for $10. You say, assuming that voucher is in evidence, it does not support the ledger entry, the ledger entry is no better with it than without it, and in order to assume that it cost $10 for the thousand brick used in the gas making business, the burden was on the complainant to show the fact of the purchase of that brick and of its being actually approved by the man who bought it, by the man who knew what it was worth, by proof that he went around the market and got the best price, and then by another witness, or that witness, that the brick was actually delivered, proof by that or another witness that it was actually used—that is your point, isn't it?

46208

Mr. Chambers: Largely.

The Master: Now, how long would it have taken in your opinion, Mr. Chambers, to try this case if that rule had been adopted?

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Mr. Chambers: My answer to that is, regardless of the length of time—I quote from the Master—you said that you did not understand that there was any different rule in trying a rate case from any other case, and because the complainant company is consolidated with other companies and grown to great magnitude, is no reason at all why the ordinary rules of evidence should be dispensed with.

The Master: I repeat that, Mr. Chambers. There must be no different rule in this case, because it is a rate case, than in some other case which is not

46210 a rate case. The same rule must apply, but what I am trying to find out from you, if you are willing to tell me, is what in your honest judgment would have been the time required to try this case if I had adopted the rule that you now contend for, whether that rule might be right or not.

Mr. Chambers: I must say honestly that I do not believe, firstly, that the case would have taken so long to try as it did, if they had complied with the rules of evidence.

The Master: Decision reserved. Next motion. I think that statement is so ridiculous as to need no 46211 further comment.

Mr. O'Brien: Put me in there as making a stronger comment than that, that we could have finished the case three months sooner if the rules of evidence had been followed.

The Master: What is the use of making that kind of statement and trying to draw fire from me—

Mr. O'Brien: You knew what the answer would be when you asked the question.

The Master: No, I supposed that any reasonable man representing the defendants would immediately have said that this case would have taken ten years to try if that kind of proof that is now contended for had been required.

46212 Mr. O'Brien: That is a *reductio at absurdum* that is not justified.

Mr. Chambers: I have had some experience along that line. I offered in evidence some 55,000 vouchers and prove the handwriting on every one, and tried the case in three weeks.

The Master: Next motion.

Mr. Chambers: Could I ask the Master whether, in his opinion, if it took a long time to try, that would be a reason for changing the rules of evidence? Suppose it would take a long time as you say?

46213

The Master: I think the rule is as I indicated it when I allowed the books in evidence, that there are conditions and circumstances one of them being the length of time which it would take, that has required the courts to adopt a modified rule in certain classes of cases.

Mr. Ransom: The rule of convenience.

The Master: This is still my opinion as expressed when I admitted the books in evidence. Putting it another way, Mr. Chambers, I think the courts have reached the point where they have taken the old common-law rule of a man keeping his own books of account, under certain circumstances, and using those 46214
books of account, although they were self made evidence in a way, that they have been kept in regular course, and they are his own books of account—that is, the old common-law rule that a man suing for goods sold and delivered, under certain circumstances, could prove his case by his own books, that that rule has been extended, in my judgment, in the light of present day conditions of business and big affairs.

Mr. Chambers: The trouble is you said yourself these are not books of original entry.

The Master: I still say they are not books of original entry in the sense that the old common-law 46215
rule requires the man to produce books kept in his own handwriting, with supporting proof that he was a man of good repute, and that he treated his customers fairly and honestly, and all the rest of the things with which the courts hedged it round. But, in any event, it was a case-made rule. It was a rule that grew out of the necessities of a situation that the courts found, and the courts have extended that old rule to a point where a case of this kind shall not be a futile thing.

46216

Mr. Chambers: We are dealing with the books of a corporation here.

The Master: Yes, under the protection of a Public Service Commission.

Mr. Chambers: Perhaps when your Honor comes to consider it, you will strike out the books.

The Master: I will be frank to say that on that motion I am predisposed to be against you.

Mr. Chambers: If you would read some of the statements you made during the course of the trial, in which you expressed from time to time considerable doubt as to whether your ruling was correct—

46217 The Master: Yes. I think the facts submitted in this case since the comments by the Master, from time to time, have indicated to the Master the absolute accuracy of those books.

Mr. Chambers: You said from time to time you would not take them as proof.

The Master: Yes, but in my judgment, there is independent proof of the facts contained in those books.

Mr. Chambers: You would not take the vouchers as independent proof of the facts.

The Master: I am going to take them all in.

Mr. Chambers: You said you would not take them

46218 as proof.

The Master: I said I would not take them as proof standing alone without anything else, but there is something else in this record. There is proof in this record beyond the shadow of a doubt that it takes a certain amount of coal to make gas, that you cannot make coal gas without coal. There is proof in this record that you cannot make water gas without oil, there is proof in this case that you have to have certain things, that you have to have certain employes.

Mr. Chambers: That is true.

Mr. Hayward: I do not want to enlarge on this

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argument, if the Master please, but from time to time if I do not take identically the view that Mr. Chambers does, would you like to have me take it up at that moment?

The Master: I see no objection to it.

Mr. Hayward: It will be very brief and rare, I think. I want to say that my theory on the question of this evidence is that the courts have to some extent departed from the rule that we learned in the law school that you have been talking about, but my theory of this case is that the courts have in no case departed either to the extent or in the direction that the Master has departed from that rule in this particular case; that the only departure the courts have made in this class of rate cases, or in other classes of cases entirely different, but involving entries and vouchers of great number and perhaps comparative trivial size, has been this: To match the voucher for your thousand brick at $10, there would have been one hundred other vouchers for 100,000 other bricks, 100 other vouchers for so many tons of coal, but there were vouchers somewhere, there was a routine of all these transactions.

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Now, the way the courts have modified the rule, and the short cut that they have taken in this has been, as I think you know, to detail officers of the company to go and get a force of men to work under their supervision, in every case, however, seeking out these original vouchers, and for the purposes of the trial going through those vouchers and tabulating them and condensing the contents of perhaps a million vouchers. You remember the Northern Pacific case, where they had all these thousands and thousands of way bills where the freight had passed back and forth at the junction point. The Court did not allow the books in, books similar to the books you have let in here. The Court insisted that responsible

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officers take a clerical force and go back to these original entries for the purposes of the trial and for the convenience of the Court tabulate them in a condensed form, retaining largely, as it seems clear to me, the protective features that the old common-law rule had, which you have completely abandoned in this case. Now, I do not say that I agree with Mr. Chambers that the common-law rule was necessarily to have been followed in this case, I do not say that I agree with him; but I do say—you may call it absurd, if you please—that it would not have taken any longer to try this case if we had stuck
46223 to the common rules of evidence and have avoided all these discussions that have gone on. My contention is that you must do either one of two things, you must either stick to the rules of law that we have learned from earliest infancy, or if you are going to bridge this gap by some kind of a structure you have got to build the bridge according to the rules laid down by the courts, and according to the structural features which the courts have laid down. That you have not done. In other words, the courts have said there is a way to bridge this gap with a certain kind of bridge, but you have not done that, you have gone across in a ferry boat, which was never heard
46224 of in a court in the world.

The Master: Let me interrupt you. The point that the Court had in mind in these rulings that have been made is the protection of the litigants to the end that evidence shall not be in the case that might have been fabricated or fictitious evidence, is that so?

Mr. Hayward: Or mistakes.

The Master: Or mistakes. The whole point about it is, to be sure that equal justice is done and that no fictitous proof is in, or inaccurate proof is in, isn't that it?

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Mr. Hayward: Yes, I think that is so, either intentional or accidental.

The Master: You said a minute ago that the Court had approved a certain kind of bridge to get over the gap. It is not your contention that that bridge is the only kind of a bridge; in other words, that if it is a cantilever bridge I cannot use a suspension bridge?

Mr. Hayward: No, I do not contend that, but I contend that that is the only system by which this thing can be abbreviated for convenience sake and still retain the essential protective elements that the old common law really had.

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The Master: I am prepared to rule on this question now, Colonel. My mind is so thoroughly made up that it would seem to be a useless thing for me to say that I am reserving decision when I am not. So far as this broad question of the admission of these books in evidence is concerned, I am convinced that the rights of the defendants have been fully and amply protected by the right that has been afforded them to examine the vouchers themselves and to check up the cash books and to make inquiry at their leisure in the offices of the company, by everything that could possibly bear upon the situation, plus the proof offered by the officers and operating officials of the company themselves, in my judgment it has amply protected the interests of the defendants, and I am fairly within the rule that has been laid down in cases of great magnitude that these books are properly in evidence.

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Mr. Hayward: May I say that everything that you have just said about this, would apply equally well to the allegations in the complaint of the plaintiff?

The Master: Well, that may be.

Mr. Hayward: Well, isn't that true?

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The Master: I don't want to answer that at this time.

Mr. Hayward: You might decide this case on the complaint, and then everything you have said would apply equally well on their complaint, and yet it is not evidence.

The Master: Well, that, of course, is argument, but that is my view of it. I will give my decision in more accurate language in the report that I make.

Mr. Hayward: Well, of course, I supposed that would be your Honor's ruling, because we threshed it all out before, but we are just making this for the
46229 record now, and I wanted to point out as we went along, any difference in my opinion and that of the other counsel.

The Master: Well, I do not want, in a sense, to express myself as decision reserved, when my mind is so fully made up.

Mr. O'Brien: I reserve my comment until the summing up, your Honor. I have some views on this subject.

Mr. Chambers: I don't know yet. Why isn't this as good a time as any to have it definitely settled as to what papers and data were considered as being ruled in, without having been offered?

46230 The Master: What difference does it make to you now, you have got your motion to strike out, your motion is to strike out all papers that were received.

Mr. Chambers: Of course, I don't know what I asked—what we are moving to strike out, I am moving to strike out whatever is in.

The Master: You made the motion anyhow?

Mr. Chambers: I did, but—

Mr. O'Brien (interrupting): There may be some difficulty about preparing the case on appeal, your Honor, if that is put in in that way.

The Master: Not a bit. The only papers that

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can be placed in this record on appeal are the papers that have been expressly received in evidence.

Mr. O'Brien: That were marked?

The Master: No, there were some I deemed in evidence, giving them exhibit numbers, and I should say rather, no exhibit can be printed in this record except those that have received an exhibit number or an endorsement made on them. There were some papers that I said would be deemed to have exhibit numbers that were not physically marked.

Mr. Chambers: There is one other ground that I omitted to state as a reason for striking out the books, and that is, that they are based on books and records 46232
and vouchers of other companies which were not really offered in evidence, and were not ruled in evidence, nor were they ever produced by the complainant.

The Master: What item do you refer to in that connection, to illustrate your point?

Mr. Chambers: Well, purchased gas is one of them.

The Master: Yes, I have that in mind. I am going to hear Mr. Ransom on that.

Mr. Chambers: I would not want to limit it to that; there are many, many items, if you remember.

The Master: Well, now, to illustrate that point, in that connection, the books of the Consolidated Gas 46233
Company showed that they paid the Amsterdam Gas Company a certain sum per thousand cubic feet, representing cost plus ten per cent. You say there is no proof that that was the cost to the New Amsterdam Company.

Mr. Chambers: You remember the witness Teele said from time to time that he had to go into these other books for information?

The Master: I remember that. Now, your point is I must strike out, assuming that I leave the books

46234 in, those items of payments to the New Amsterdam Gas Company, because they are mere statements of payments, without proof that it was the cost under the agency agreements, isn't that so?

Mr. Chambers: Yes, sir.

The Master: I have that in mind.

Mr. Chambers: You have other items similarly situated.

The Master: I was going to get to that when I came to an inquiry of the defendants as to what their contention was in respect to certain particular items on these exhibits and in the Teele exhibit so that we
46235 will get to them again in a little while.

Mr. Chambers: Unaccounted for gas.

The Master: What?

Mr. Chambers: Unaccounted for gas would be one.

The Master: Well, unaccounted for gas, I think, is in a class by itself. I do not think it depends upon the books of other companies. I think the record is thoroughly complete and thoroughly clear that there is a percentage of unaccounted for gas due to condensation, slow meters and other things, and temperature.

Mr. Chambers: I think it fairly appears that it
46236 would be very small if the Consolidated were conducting its business by itself.

The Master: Well, that is a matter I have got to reach a conclusion on, based upon the record. I am not prepared to say at this minute what I think is a fair percentage for unaccounted for gas, but I think the record is fairly complete on that point, and that is one of the points I am going to ask for some discussion on.

What I intend to do, when you get through with your motions to strike out, Mr. Chambers, is not to

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ask for a spread-eagle series of speeches here, but to ask for answers to particular inquiries as to what the fact is as to particular items making up the claim of the complainant company. I thought the quicker way to get at it would be to take the complainant's claim as set out in these exhibits, and ask the defendants' views with respect to it. I know what the complainant's view is as to most of it.

Mr. Chambers: Well, I move to strike out the operating ledgers from 1906 to 1917 inclusive, being Exhibits 260 to 271, inclusive, upon the grounds already stated when we moved to strike out Exhibits 188 to 200.

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The Master: I will deny the motion.

Mr. Chambers: I might say that the situation in regard to these books is aggravated because no one was called to tell us anything about the books; who they were kept by, who made the entries, whether the persons making the entries were alive or dead, or in the jurisdiction of the Court or outside the jurisdiction of the Court or whether these persons kept accurate books, or whether these books were books copied from other books, or anything about them. These books from 1906 to 1917 were just produced and offered in evidence, and I think largely—the Master said along the line that I have just mentioned, you

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said, "It is only on the theory that the Court has the power to infer that books kept in this way are probably accurate, that I have been taking them." That is found at folio 8605, and you were then speaking specifically about these books, these operating ledgers, 1906 to 1917.

The Master: Yes, and I will deny the motion.

Mr. Chambers: Exception. I take it that whenever you deny my motion to strike out, you give us an exception?

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The Master: Surely.

Mr. Chambers: I now move to strike out Complainant's Exhibits 272 to 280 inclusive.

The Master: What are they?

Mr. Chambers: The books for 1919.

The Master: Yes.

Mr. Chambers: Upon the same grounds as stated in full for the books of 1918 and books for 1906 to 1917 inclusive.

The Master: Motion denied, exception allowed

Mr. Chambers: I move to strike out the testimony of the witness Teele, found at folios 9214 to 9225,

46241 being Schedules 14-A, 14-B, 14-C of Exhibit 205.

The Master: Those were the tax adjustments, weren't they?

Mr. Chambers: Yes.

The Master: I will reserve decision on that for the time being.

Mr. Chambers: You will recall that the witness Teele admitted that he got his item of $14,281,563.36 from the returns made by the company to the State Board of Tax Commissioners.

The Master: Yes.

Mr. Chambers: And these returns were never offered in evidence, and were never received in evi-

46242 dence.

The Master: I will reserve decision on that.

Mr. Chambers: And in a few minutes I am going to move to strike out Exhibit 205. I might as well do it now. I now move to strike out Complainant's Exhibit 205 upon all the grounds urged at the time it was offered in evidence, and upon the further ground that it appears that the witness Teele did use the books, vouchers and data of the other companies which were not in evidence, the tax reports to the State Board of Tax Commissioners which were not

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in evidence; that in many instances he used the oral statements made to him by Mr. Alrich and Mr. Woods, and these statements were never offered or put in evidence, and if they had been offered they would seem to me to have been clearly incompetent, on the ground that they were hearsay, the witness Alrich and the witness Woods being available as witnesses; and further on the ground that the exhibit is subject to all the infirmities that the books are, and I base the motion also on all the grounds used as a basis for asking that the books be excluded.

The Master: I will reserve decision, because this motion includes what you have already said in reference to the 14 schedules, 14-A, 14-B, and so on, and I will have to reserve decision. 46244

Mr. Ransom: Many of those statements of facts are far from accurate. For example, the tax return which he said was not in evidence is Exhibit 375, and the schedule with respect to property used and not used is in writing and was produced and marked, and was also exactly the same schedule which was used or misused by various of the young men for the defendants.

The Master: Well, I won't hear argument just now.

Mr. Ransom: The return is in. 46245

The Master: I won't hear argument just now.

Mr. Chambers: If the Master please, why does he make such a misleading and unwarranted and untrue statement? I have before me Exhibit 375, and it is only the tax bill for 1919. What did I say when I moved to strike that out? I based my motion on the returns to the State Board of Tax Commissioners, which I said were not in evidence, and I say they are not in evidence. Now, the tax bill is quite another thing. So that there is no warrant at all for what he

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said, it is not correct, and what I said was correct, because I can cite you the folio. The Master will recall that the tax reports were never offered in evidence. I got them down on my desk, and from time to time he spoke about them, and I said I would have them until the end of the case, and I have them yet, but he never offered them.

The Master: I will reserve decision on that motion.

Mr. Chambers: I wanted to say in regard to the Teele Exhibit 205, and it is true of all Teele's exhibits, that those were supposed to be tabulations of the books, and of course they could not be any stronger

46247 or any better evidence than the books themselves. That was stated from time to time by the Master.

The Master: No question about that; I repeat it now.

Mr. Chambers: But the witness Teele did enlarge upon the books, he did as you know get outside of the books, he made adjustments, and he used the books of the other companies, and he used the vouchers and data of other companies, and he used oral conversations he had with the witness Ahrich and the witness Woods and so on, so that his schedules do not represent a tabulation of the books and vouchers. They are more than that.

46248 The Master: Well, I will look at it when I come to consider it. I have got the exhibit right here.

Mr. Chambers: I move to strike out Exhibits 283, 284 and 285. 283 is comparison of prices for materials paid by Consolidated Gas Company, 1913 to 1918; 284 is a statement as to anthracite coal, consisting of three sheets, 1913 and 1914, and 285 is a statement relating to bituminous coal, consisting of three sheets, 1913 and 1914, on the grounds stated at the time the exhibits were offered in evidence, and that the exhibits are tabulations of proof not in the record.

46249

The Master: The motion will be denied, exception allowed.

Mr. Chambers: Do you recall that you yourself, the Master himself, stated at folio 10711 that you would take these three exhibits as tabulations of the vouchers which are not in evidence?

The Master: Yes.

Mr. Chambers: I move to strike out Exhibits 286, 287 and 288 on the same grounds.

The Master: Those are comparison prices, aren't they, schedules?

Mr. Chambers: Yes.

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The Master: 288 I have before me, that is various material, anthracite coal, and what was 287?

Mr. Chambers: 287 was bituminous coal for 1918.

The Master: And 286?

Mr. Chambers: 286 was anthracite coal, 1918.

The Master: The motion will be denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 290, being a paper purporting to be a contract between Consolidated Gas Company and Standard Oil Company of New Jersey, on the ground that the contract was never properly proved.

The Master: Motion denied.

46251

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 294 on the ground that the contract was not properly proven. That is a memorandum of agreement, December 4, 1917, between the Standard Oil Co. and Consolidated Gas Co. As to those contracts, they did not prove the signatures and so forth of the Standard Oil Company.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 303 on the ground that the contract was not properly proven.

The Master: What was that?

46252 Mr. Chambers: That is another memorandum of agreement between the Standard Oil Company and the Consolidated Gas Company.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Exhibit 304, on the ground that the contract was not properly proven.

The Master: That is another one of those oil contracts?

Mr. Chambers: 1919 contract between the Standard Oil Company and the Gas Company.

The Master: Motion denied.

46253 Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 317, that is an agreement between the Standard Oil Company and the Consolidated Gas Company.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits 319, 320, 321, 322, 323, 324 and 325.

The Master: What are they?

Mr. Chambers: They are tabulations showing amount of oil delivered during the years 1913, 1914, 1915, 1916 and 1917 respectively, and for the eight months of 1918.

46254 The Master: Give me those numbers.

Mr. Chambers: 319, 320, 321, 322, 323, 324, 325 and 326 I will include.

The Master: Motion denied.

Mr. Chambers: Exception. The grounds for that motion being based not only on what was said at the time, but also on the ground that the contracts were not in evidence. I take an exception.

I move to strike out Complainant's Exhibit 326 on the ground that the contracts and vouchers were not in evidence.

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The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits 327 to 331, inclusive, on the ground that the contracts were not in evidence, not properly proven.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Exhibits 332 to 335, inclusive, upon the ground that the contracts were not properly proven.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Exhibit 337 on the ground the contract was not properly proven.

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The Master: What is that?

Mr. Ransom: Standard Oil contract for 1914.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Exhibit 338, on the ground the contract was not properly proven.

The Master: What is that?

Mr. Ransom: Produce Exchange inspectors' reports.

Mr. Chambers: Or rather on the ground that neither the Produce Exchange inspectors nor anybody else were called to prove that it was accurate.

Mr. Ransom: This was compiled and you received it as a typical form of report. 46257

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 340, the order received December 31, 1917, from the War Department, on the ground that it was not properly proven.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 341 on the ground that it was not properly proven.

46258

Mr. Ransom: The toluol contract.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 342 for the same reason.

Mr. Ransom: That is the order for the turning on of gas into the Government toluol plant.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 343 on the ground that it was not proven.

The Master: What is that?

Mr. Chambers: That is a contract between the
46259 Government and the complainant at the 99th Street plant.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 343 on all the grounds made when the books were offered in evidence.

The Master: What is that?

Mr. Chambers: That is a summary of operating light oil recovery plant, 21st Street station.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 346 and Complainant's Exhibit 347, on the ground that the letters were not proven.

46260 The Master: What were those papers?

Mr. Chambers: Those were letters, the first one was a letter from the Seaboard By-products Company, dated May, 1919, *re* drip oil, and the other was a letter from The Texas Company.

The Master: What numbers were they?

Mr. Chambers: 346 and 347. There was no proof offered as to who wrote the letters or anything about them, they were just offered in evidence.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out

46261

Complainant's Exhibit 350, that is a summary from testimony as to the facilities of the Consolidated Gas Company used jointly between the complainant and other companies, the value of property and so forth.

The Master: Motion denied.

Mr. Chambers: You will recall in regard to that you said you would not take it anyway as to the value of the property.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: I will take Mr. Woods' testimony.

Mr. Chambers: Well, you said you would not at that time, as to the value. 46262

The Master: As to the value of property?

Mr. Chambers: Yes. Do you want the folio where you said it?

The Master: Yes, just for information, give me that folio.

Mr. Chambers: 13886, maybe you will change your mind when you see that.

The Master: There may have been something in my mind at that time that I have not got now.

Mr. Chambers: He had in there value of real estate.

The Master: Oh, value of real estate.

Mr. Chambers: Yes, and I think the exhibit ought 46263 to go out.

The Master: Well, all right. I can see your point. I doubt very much whether Mr. Woods is competent to testify to value of real estate.

Mr. Chambers: That is what you said at the time, but you allowed it in

The Master: I will take the exhibit. I will deny your motion, but I will take up the question as to whether a particular item is proved in some other way. Don't let's spend any time on it. I am still

46264 of the opinion that Mr. Woods was hardly competent to prove the value of real estate. Well, I allowed it in as showing the basis for a charge. I will deny your motion for the same reason.

Mr. Chambers: Exception.

The Master: It was only offered, Mr. Chambers, if you will look at folio 13886, the statement by Mr. Ransom, "As a graphic statement of what the witness has testified to." Now, if the witness did not testify to something that is in there, and he was not competent to testify to it, of course it is of no value.

46265 Mr. Chambers: I move to strike out Complainant's Exhibit 351 and Complainant's Exhibit 352 on all the grounds stated at the time they were offered.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 353, being itemization of the claim of the company.

The Master: I do not think that was marked in evidence; marked for identification.

Mr. Ransom: It was not marked in evidence. Everything was read into the record as stated, but not marked as an exhibit.

Mr. Chambers: I move to strike out Complainant's Exhibit 354.

46266 The Master: I do not think that was received in evidence, I think it was only marked for identification.

Mr. Chambers: I move to strike out the answer of the witness Woods found at folio 14014.

The Master: Which answer is that?

Mr. Chambers: "Q. Have you computed the taxes? A. 10 cents per thousand."

The Master: Motion denied, upon the ground that there was no objection to the question.

Mr. Chambers: On what ground?

46267

The Master: On the ground that there was no objection to the question.

Mr. Chambers: No, but you said, "The Master: I won't let him testify what taxes are. Objection sustained as to taxes." He had already answered.

The Master: The record shows, I am reading from folio 14014:

"Q. And have you computed the taxes? A. 10 cents per thousand.

"The Master: What do you mean 'taxes'?

"Mr. Ransom: The taxes under present conditions.

"The Master: Taxes on what? 46268

"Mr. Ransom: On gas making property and gas making apparatus.

"The Master: I won't let him testify what the taxes are. Objection sustained as to taxes."

Well, now, the question was answered, and I should imagine that the ruling that I made without having the matter called to my attention by you at all, strike out that answer, although the answer is in the record. I won't grant any motion now to strike out anything. I said later on:

"Mr. O'Brien: It seems to me to be outside the sphere of the engineer of manufacture.

"The Master: I did not ask for any statement. 46269
I sustained the objection. There is nothing before me."

So I apparently excluded from consideration Mr. Woods' statement that the taxes were 10 cents a thousand.

Mr. Chambers: Exception.

The Master: I do not know what you are excepting about now.

Mr. Chambers: I move to strike out the Complainant's Exhibit 355—which purports to be a summary

46270 and tabulation of the revenues and expenses of the gas business of complainant for the eight months ending August 31st, by the witness Teele—on all the grounds urged at the time it was offered, at page 5156, and also for all the reasons I have stated in regard to the books.

The Master: Does that exhibit, likewise, carry with it adjustments of taxes and other items, such as appear in the 1918 statement?

Mr. Clark: Just the same, I think.

Mr. Chambers: I have it right here.

The Master: I will reserve decision. I will look

46271 at it.

Mr. Chambers: I can get it for you now.

The Master: I will reserve decision, and when I look at 1918 I will look at that, too. My recollection is he took estimated tax adjustments for 1918-1919.

Mr. Chambers: I move to strike out Complainant's Exhibit 356, if it was ever in evidence. All I find is that it was offered for identification. Possibly it was put in evidence, I do not know.

The Master: Judge Ransom's book, which he has given me for convenience, would indicate that it was marked for identification only.

Mr. Chambers: Only—that is what my records

46272 show. That being so, it is all right.

Mr. Ransom: That was only a summary.

Mr. Chambers: That is true of Exhibit 356, I think, too?

The Master: Exhibit 357 likewise.

Mr. Chambers: And Exhibit 357. What is Exhibit 358; what is that?

The Master: Exhibit 358 was apparently marked for identification, according to Mr. Ransom's record.

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Mr. Chambers: I do not seem to have it. He did not furnish us one of those.

The Master: Exhibit 358 is described here as a statement of the number of men employed, of each kind at the various stations, marked for identification.

Mr. O'Brien: I think that went into the discard.

Mr. Ransom: It was merely marked in connection with the cross-examination of the witness.

Mr. Chambers: What page?

Mr. Ransom: Page 4813 of the print, I think.

The Master: Offered in evidence at page 4813; discussed, this record shows, at 5455-5469. I do not know what that means. 46274

Mr. Goetz: Pages.

Mr. Chambers: We move to strike out Complainant's Exhibit 359, being a memorandum used by Mr. Woods, on the grounds stated at the time it was offered and marked in evidence.

The Master: The motion is denied.

Mr. Chambers: Exception.

The Master: I think that is one of the instances where counsel for the defendants called on the witness to produce the paper that he was using to refresh his recollection, and I allowed it in evidence for that reason. 46275

Mr. Ransom: That is that tax return, which is that exhibit (indicating to Master).

The Master: What is it marked?

Mr. Goetz: You better take the original; that is a copy.

Mr. Ransom: It is marked Exhibit 375.

The Master: That was 1919, wasn't it?

Mr. Ransom: This is 1918. Exhibit 375 is the tax return.

46276 Mr. Chambers: Is it the tax return to the State Board of Tax Commissioners?

The Master: No, to the local board.

Mr. Chambers: The witness Teele, I was asking him, and I said, "What did you use?" and he said, "The report to the State Board of Tax Commissioners."

The Master: Come on, let us get along.

Mr. Chambers: I will refer back, if there is any doubt in the Master's mind about it.

The Master: We will get at that later on.

Mr. Ransom: Page 6466 shows your cross-exam-
46277 ination of Mr. Teele with respect to this return, and the return being marked in evidence, and a large part of the return was put on the record at the time—by you, fortunately.

Mr. Chambers: Shall we clear that up?

The Master: No, go ahead.

Mr. Chambers: There is the counsel's statement on the record there.

The Master: I will check it up when I get to it.

Mr. Ransom: There is the original exhibit (indicating to Master).

Mr. Chambers: I move to strike out Complainant's Exhibits 360 and 361.

46278 The Master: Denied.

Mr. Chambers: Exception. What is Exhibit 362?

The Master: Voucher No. 8496, relating to oil transactions between the Consolidated Gas Company and the Mutual, marked only for identification.

Mr. Chambers: I move to strike out Exhibit 364, being a paper purporting to be cost of production and distribution, 12 months ending December 31st, 1918, by the witness Teele, on all the grounds heretofore stated with regard to Exhibit 205 and the books.

The Master: That motion will be denied.

46279

Mr. Chambers: Well, this is one that you are going to take under consideration, is it, the same as that other, on the ground it went outside the—

The Master: Does that include the tax items, too? I did not so understand it.

Mr. Chambers: Yes, this is where he used the records of other companies and so on.

The Master: Well, I will reserve decision on it.

Mr. Ransom: There is no reference to other companies on that.

The Master: I will reserve decision on it.

Mr. Chambers: Of course, this Exhibit 364 and Exhibit 205 and these other schedules of the witness 46280
Teele—I may as well state it now on the record—are subject to another informity, and that is the salaries of the officers, salaries of the general office as they call it, and I think there are some other salaries. For instance, like Mr. Carter's. It appeared from the testimony—I am speaking now from memory, but I think I have it right—that Mr. Carter received a salary from some of the other companies, one at least of $2,500 I remember, and he performed work, labor and services of some kind for some of the other companies; and he also performed some service, although he tried to make it appear it was slight, for the nongas making part of the 46281
Consolidated Company; and yet no one was ever called, nor was there any attempt ever made in the case, to apportion that part of his salary which is really applicable to the gas making business.

The Master: Oh, there was an attempt made.

Mr. Chambers: No attempt made as to Mr. Carter, because he said it could not be done.

The Master: Oh, yes, Mr. Clark has put in some proof, I think, taking off a third of those general office salaries.

Mr. Clark: No proof by the complainant, though.

46282

The Master: No.

Mr. Chambers: You are speaking now of the burden being on the complainant.

The Master: Mr. Chambers said no attempt was made by anybody.

Mr. Chambers: I did mean to limit that to the complainant.

Mr. Ransom: There was no necessity for it. Any work that was to be paid for by any other company was paid for as an additional salary.

Mr. Chambers: Well, that is Mr. Carter's, but then you come to Mr. Gawtry's and he received a large

46283 salary—

The Master: You are getting into a different realm of discussion now. When I get to the items making up the cost of production and distribution, I intend to ask you your views as to these items. The Teele exhibit just now is intended to be a statement of the books, of what is paid. All I am reserving decision on are questions that you raised as to adjustments made by Mr. Teele, and as to whether they are strictly tabulations from the books, or as to other matters in evidence. The cost of making and distributing gas contains a lot of items and elements, apparently some of which are in dispute and that I will have to hear ar-

46284 gument on.

Mr. Chambers: My point being where they did not apportion, or at least make some attempt to apportion a large expenditure like the salary of Mr. Gawtry and the salary of Mr. Woods—Mr. Woods got $18,000, you remember, and he got five from two other companies.

Mr. Ransom: He wishes he did, probably.

The Master: I am going to take that up when I get to it.

Mr. Chambers: Do you dispute that he got $18,000?

The Master: Do not take that up, Mr. Chambers.

46285

Mr. Chambers: It may have been misstated in the record. No attempt was made to apportion it.

Mr. Ransom: That kind of a raise does not help out very much.

Mr. Chambers: Well, it is in the record as to his receiving $18,000. And I can show you where it is. It may have been corrected, but I did not see the correction. He got five and five and eight.

Mr. Ransom: A generous stenographer called "500" 5,000.

Mr. Chambers: That does not have anything to do with the fact that he got $18,000.

Mr. Ransom: You know better, why reiterate it? 46286

Mr. Chambers: I confess I thought it was 13, but I was surprised to find it was 18. I had to look at it two or three times. But I am sure it is there, though.

The Master: It was itemized several times.

Mr. Chambers: It was itemized 5, 5 and 8. I move to strike out Complainant's Exhibit 365.

The Master: You make the same motion with respect to Exhibit 365 as you made with respect to Exhibit 364, and decision reserved.

Mr. Chambers: Well, wait a minute. I do not know whether Exhibit 365 is in evidence or not.

Mr. Clark: It is in evidence, yes.

The Master: Yes, it is in evidence. I will reserve 46287 decision on that.

Mr. Chambers: Yes, it is in evidence. On the same grounds.

The Master: Yes.

Mr. Chambers: And I move to strike out Complainant's Exhibit 366 on the same ground—the same grounds as to Exhibits 364 and 365.

The Master: As to Exhibit 366, I will deny that motion now.

Mr. Chambers: Well, that is subject to all the infirmities of the other.

46288

The Master: No, I don't think so. I will deny that motion as to Exhibit 366 now. Exception is allowed.

Mr. Chambers: Why Exhibit 366 even has 1918 in it, you know.

The Master: That is all right.

Mr. Chambers: It is related to the other exhibit.

The Master: I remember what Exhibit 366 is. I am going to deny the motion.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 367 on all the grounds stated at the time the books were offered in evidence,

46289 the grounds stated here—

The Master: Motion denied.

Mr. Chambers (continuing): In regard to striking out Exhibit 205, etc.

The Master: Exhibit 367, according to this memorandum, is a detailed statement and summary of manufacturing plant and equipment withdrawn from service.

Mr. Chambers: Yes, he got it right off the books.

The Master: Yes.

Mr. Chambers: The books, if they are not proper evidence—

The Master: Well, I have denied the motion to

46290 strike out.

Mr. Chambers (continuing): So far as the testimony on plant withdrawn is concerned—

The Master: I denied the motion to strike out the books, and deny the motion to strike out this exhibit.

Mr. Ransom: Mr. Mrich testified to every one of those things.

Mr. Chambers: Did he?

Mr. Ransom: He did.

The Master: All right, let us get to the next one.

Mr. Chambers: You said you did not call him for that, do you remember that?

46291

Mr. Ransom: I put him back on the stand on it, and he went over every item specifically.

Mr. Chambers: The same for Exhibit 368.

The Master: How are you going to put him back on the stand?

Mr. Ransom: I say I did put him back on the stand and he went over every item of the exhibit.

The Master: I thought you said you were going to put him back on the stand now.

Mr. Ransom: Not now.

The Master: Exhibit 368 you move to strike out. Motion denied.

46292

Mr. Chambers: I did move to strike out Exhibit 368.

The Master: Yes, and I did deny the motion.

Mr. Chambers: And I did not take an exception, but I will. Exhibit 369 the same.

The Master: Same ruling.

Mr. Chambers: On the same grounds I move to strike that out. Exception.

Mr. O'Brien: We may as well put "*id.*" all the way down; it is the same ruling.

The Master: You can hardly mean that, Mr. O'Brien; there are several that I have not passed on.

46293

Mr. O'Brien: Now, that Exhibit 366, so far as showing that was a general statement, your Honor, I do not think your Honor ever intended to let that go in, seriously.

The Master: Exhibit 366, according to my recollection, and I think my recollection is clear about it, is a summary of what the books show.

Mr. O'Brien: Well, they only produce the operating ledgers.

The Master: I mean it is a summary of the operating ledgers. As to those years there was no adjust-

46294 ment of that kind, he simply took the taxes that were paid as appeared upon the books. There were some items of adjustment that appeared in one year that he threw into a prior year, which explained that. I am perfectly clear about Exhibit 366. I may be wrong about my ruling, but I am clear as to my understanding of the paper.

Mr. Chambers: There were "Jointly Used Facilities" in that, you know.

The Master: Yes, but it is a statement of what the books show, that is all.

Mr. Chambers: Renewals and replacements.

46295 The Master: Yes, according to the books.

Mr. Ransom: And vouchers.

Mr. Clark: Did I understand you to say that you understood he took in just the taxes paid? He included in there all the taxes accrued.

The Master: According to the books—set up on the books, yes.

Mr. Chambers: He included all those taxes on real estate of corporations, you remember.

The Master: Yes.

Mr. Chambers: That never will be paid.

The Master: Yes, I understand that.

Mr. Ransom: I wish the Attorney General would

46296 so state.

Mr. Chambers: I did. Don't my words mean anything?

Mr. Ransom: Not much, on tax matters.

Mr. Chambers: I think we have that pretty reasonably clear. Does not the Master think so—that tax on real estate of corporations? I mean, didn't we leave a pretty good impression in your mind?

The Master: Yes, I will say that.

Mr. Chambers: That it is pretty likely never to be paid? They were cancelled in the past, you know.

46297

The Master: I am willing to admit that you made a very strong impression on my mind as to that duplication of items—it was such a plain duplication.

Mr. Ransom: I hope it proves to be such.

Mr. Chambers: Exhibit 372 is in evidence?

The Master: Yes, the report of manufacture, 99th Street station.

Mr. Chambers: Exhibit 373 will be in the same category.

The Master: Are you moving to strike out?

Mr. Chambers: I move to strike them out on the grounds urged at the time they were offered.

The Master: I will deny that motion. 46298

Mr. Chambers: I move to strike out Exhibit 375.

The Master: Why?

Mr. Chambers: On the ground that it was not properly proven, for one thing. It is just a tax bill for 1919.

The Master: No, no, Exhibit 375 is the return to the local Tax Commissioners.

Mr. Chambers: Could I see it a minute? Have you it there?

The Master: Yes, show it to Mr. Chambers.

(Mr. Ransom hands paper to Mr. Chambers.)

Mr. Chambers: It relates only to personal taxes.

The Master: Yes, but it is the return made to the 46299
local Tax Commissioners. I have got to take that.

Mr. Chambers: You will recall, if I remember correctly, that the witness Teele set up some item for personal taxes.

The Master: That is not the point.

Mr. Chambers: The question was whether it was gas or nongas.

The Master: That is not the point, the point just now is that there was offered and received in evidence a report, made in accordance with law by this com-

46300

pany, to the local Tax Commissioners. Whether it bears out something that Mr. Teele said, or whether there is evidence to support Mr. Teele's figures is another question. Just now your motion is to strike out that exhibit, and I am asking you why I should strike that out.

Mr. Ransom: Most of the exhibit was spread on the record, page 6469 and following, on Mr. Chambers' own cross-examination bringing out the details of the returns.

Mr. Chambers: Perhaps I had in mind another exhibit.

46301 The Master: Yes.

Mr. Chambers: I recall this now.

Mr. Ransom: It was also used by the witness Howard.

Mr. Chambers: What is that?

Mr. Ransom: It was also used by the witness Howard in making up his apportionment.

Mr. Chambers: Well, I withdraw, then, that motion to strike out that exhibit, at present anyway. It relates only to personal property taxes.

The Master: We will take a recess until two o'clock.

Mr. O'Brien: In that regard, your Honor, I stand
46302 on the objection previously made.

The Master: As to Exhibit 375?

Mr. O'Brien: As to that, yes.

Mr. Chambers: Yes, I don't mean by that not to stand on the objection made at the time.

The Master: That is all right, that you will not present an independent motion to strike out now.

Mr. O'Brien: By reason of something that has intervened since.

The Master: Yes.

Recess.

46303

Afternoon session.

Mr. Chambers: I want now, while we are passing this way, to make it absolutely certain that what I said a little while ago in regard to the Teele exhibits, schedules 14-a, 14-b and 14-c, were based on the report to the State Board of Tax Commissioners. We find at pages 3082, 3083, folios 9245, *et seq.*, the following:

"A. The figures that I am giving you here are the figures taken from the company's gross earnings report.

"Q. Filed with the State Tax Commissioner? 46304

"A. The State Tax Commissioner. It is based upon the twelve months ending October 31, 1918.

"Q. So really the basis of this figure of $38,797.04, so far as it relates to bond income finds its genesis in the report made by the Consolidated Company to the State Board of Tax Commissioners, upon which the State Board computed the gross income?

"A. Yes.

"Q. Then I would not find that detail in the company's books here?

"A. Which detail? The detail of the tax or the detail of the basis of the tax?

"Q. No, the detail of the basis of the tax. 46305

"A. You would find ten months of it. You would find the income from January 1st to October 31st, 1918. The months of November and December, 1917, which are included in the return, you would find in the 1917 books, not in the 1918.

"Q. 'Sales less uncollected bills and allowances.' Where did you get that from, that amount, that being a little item of $14,281,563.36—just a bagatelle?

"A. All these figures are taken from the return made by the company to the State Tax Board.

46306

"Q. So that has its basis entirely in that return?

"A. Absolutely."

I move to strike out the exhibit of Col. Miller, the exhibit being No. 377, found at page 7620 of the record, and entitled, "A summary prepared by Col. Miller of what his oral testimony would be if his testimony was called for by question and answer."

The Master: Mr. Chambers, I have a very strong opinion about the Miller testimony, and have a very clear notion as to how far I want to consider it and what I want to do with it, but I shall let his testimony stand. Your motion will be denied.

46307 Mr. Ransom: They have not contradicted his testimony as to the amount that would be necessary to be spent, it is absolutely uncontradicted testimony in this case, that by the expenditure of the amount for which he testified this property could be made in the same condition as new.

The Master: Suppose I do not adopt that theory of the case at all.

Mr. Ransom: That is another matter, but to any court to which this case may go, if it goes at all, that that is the absolutely uncontradicted testimony.

Mr. Chambers: You don't have to prove that fire will burn, or that water will run down hill.

46308 The Master: I cannot strike the testimony out. I shall discuss that testimony in my report, either directly or indirectly.

Mr. Ransom: If your Honor adopts a different theory that is a different matter, but in any court to which this case may by any possibility go, the Miller testimony as a measure of what it would cost to put these properties in condition as good as new, is uncontradicted in this record.

The Master: If it will serve to relieve the minds of counsel for defendants, I am not going to figure up

46309

what it is going to cost to put this plant in a condition the same as new; at least I do not intend to at this time.

Mr. Ransom: I do not believe it is necessary.

The Master: I may change my mind, but at this time I have no such idea. Therefore, in all likelihood I will not use Mr. Miller's testimony.

Mr. Chambers: You understand, your Honor, that the defendant moves to strike out his testimony on all the grounds stated at the time he gave the testimony.

The Master: I think the testimony has got to stand. I think it was properly received and must remain in the record. 46310

Mr. Ransom: There are also some other matters to which Mr. Miller testified, which are not on that question of cost of restoring the property to the condition the same as new. He testified in respect to unit prices as compared with 1906 and 1911 and the present time, for example; he testified in confirmation of many of these units of quantities and materials. He testified to many things which have a bearing on other phases of the case.

The Master: His testimony may stand for such use as it may have in this record.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 382, being another one of the schedules of Mr. Teele, for revenue and expenses for the twelve months ending October 31, 1919, on the grounds stated at the time it was offered. 46311

The Master: Did I receive that in evidence?

Mr. Chambers: Yes.

The Master: That was the nominal year?

Mr. Ransom: That was the nominal year ending October 31, 1919.

Mr. Chambers: That goes beyond August 31, 1916.

46312

The Master: I will reserve decision on that.

Mr. Ransom: Your Honor repeatedly ruled that you were taking to October 31st.

Mr. Chambers: I don't think so.

The Master: Yes, that is true, but I have always been doubtful as to the usefulness of a nominal year statement.

Mr. Ransom: Everything happens in twelve months that happens in any other twelve months.

The Master: That is not so.

Mr. Chambers: Yet counsel would not open—he had an opportunity to put in the whole year, which

46313 he would not do.

The Master: Matters are written off at the end of a fiscal or calendar year that are not written off in the middle of a nominal year.

Mr. Ransom: But they are written off at the preceding December.

The Master: That may be.

Mr. Ransom: That is, it covers the usual time of writing off, it covers the taxes, the complete cycle.

The Master: I will reserve decision on it.

Mr. Chambers: I want to impress on the Master's mind this fact, that after this paper was received in evidence counsel had an opportunity to reopen his

46314 case and put in the entire year.

The Master: Yes. The record is perfectly clear that I indicated to counsel that I thought it was unwise to do it by reason of the time that would be taken to finish this case.

Mr. Ransom: And these defendants ran through our books and papers down into 1920, found that prices were higher than in 1919, and objected.

Mr. Chambers: I move to strike that from the record.

The Master: I won't strike it out, because it doesn't

46315

make any difference. I want it to appear in the record, if it does not already so appear, that I am convinced that Judge Ransom declined to apply to reopen the case so as to run down to the end of 1919, because I made indication to him that it would take several months longer to finish the case.

Mr. Chambers: I am not so sure of that. Whatever the reason may be, he didn't do it.

The Master: That appears. It is only fair to Judge Ransom to indicate why I think he didn't do it.

Mr. Ransom: We will stand on Little's 10 cent oil and 89 coal.

46316

Mr. Chambers: Possibly he had another reason; I would not want to say he did not.

Likewise we move to strike out Exhibit No. 383, details of rentals of jointly-used facilities, 1906 to 1917, inclusive.

The Master: That is only marked for identification.

Mr. Chambers: You are right.

The Master: I am relying on this summary which has been handed to me by Judge Ransom.

Mr. Chambers: I withdraw that motion.

Mr. Goetz: I would not want to say that that summary is absolutely accurate.

The Master: I have been relying on it.

46317

Mr. Ransom: And we have been following it. I think on any items that have come up up to this time it is accurate. I have found errors in it, which have been corrected.

Mr. Chambers: That is true of Exhibits 384, 385 and 386.

The Master: Yes, according to this.

Mr. Chambers: Now, No. 387 seems to have been admitted in evidence.

The Master: Yes

Mr. O'Brien: I am moving to strike out, if they are

46318 marked for identification, or in testimony, those relating to jointly-used facilities. They have not been proven in this case.

The Master: I don't get that.

Mr. O'Brien: So that you may understand our position, I want to record at this time my motion to strike out any and all exhibits relating to jointly-used facilities.

The Master: I cannot entertain that motion. I will entertain a motion to the effect that if Exhibits 383, 384, 385 and 386 are in evidence, that you move to strike them out.

46319 Mr. Chambers: Yes.

The Master: And I reserve decision on it. If counsel finds that they are not in evidence I will not pass on it.

Mr. Ransom: They were received.

The Master: In evidence?

Mr. Ransom: Yes.

The Master: If they were received in evidence I will rule on it in my report.

Mr. O'Brien: The whole testimony about these jointly-used facilities—

The Master: I cannot entertain a motion that way.

Mr. O'Brien: That you may know the working of

46320 my mind—

The Master: I know, but I have to have a concrete proposition to pass on. I am reserving decision now on the motion made by defendants to strike out Exhibits 384, 385 and 386 if they are in evidence.

Mr. Chambers: Now, Exhibit 387 is in the same situation, as a part of these Teele exhibits. I move to strike it out on all the grounds I stated in regard to Exhibits 364 and 365.

The Master: Decision reserved.

Mr. Chambers: I move to strike out Complainant's

46321

Exhibit 389, being what purports to be real estate improvement other than plant owned and used in the gas business, 1906 to 1918, a Teele exhibit, on all the grounds urged for the other Teele exhibits.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit 401, being certain details, or purporting to be detail of accounts receivable applicable to the gas business as of December 31, 1918, on all the grounds stated at the time the paper was offered in evidence.

The Master: I will deny that motion.

46322

Mr. Chambers: Exception. I make the same motion as to Exhibit 402.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Exhibit No. 406, being opinion of the Public Service Commission in Case No. 2235.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 407, a statement of the operations and finances of the National Coal & Coke Company, on the ground that it is a statement that is made up from papers and documents and books and vouchers which are not in evidence.

46323

The Master: I will reserve decision on that.

Mr. Chambers: I move to strike out Complainant's Exhibit No. 408, a copy of an insurance agreement of some kind. One of the grounds upon which the motion is based is that it is an insurance agreement that is participated in by the other companies, and not sufficiently proven.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 409, on the ground that it is made up from records, documents and vouchers not in evidence.

46324

The Master: I will reserve decision on that. Judge Ransom's table here would indicate that that was only marked for identification.

Mr. Ransom: That one was only marked for identification.

Mr. Chambers: I move to strike out Complainant's Exhibits 410 and 411, being a copy of a resolution and order of the Public Service Commission in relation to the Astoria Company.

The Master: I will reserve decision on that. Judge Ransom's table would indicate that those two tables were marked for identification. My recollection is

46325 they were received in evidence.

Mr. Chambers: They were at folio 14420.

Mr. Ransom: They were not received, and only marked for identification in the complainant's direct case. In the rebuttal case, the defendants having themselves gone in so protractedly to prove the Astoria investment and costs, they were again offered and received.

The Master: I shall assume that my recollection is correct, that they were received in evidence, and I will deny the motion to strike them out.

Mr. Chambers: Exception.

The Master: I think I received them quite properly

46326 as rebuttal proof.

Mr. O'Brien: Note my disagreement with Judge Ransom's statement that the defendants went protractedly into the matter of cost of Astoria.

Mr. Chambers: This was on the issuance of $14,500,000 of bonds.

The Master: As evidence of the value of that property.

Mr. Ransom: The checking up of an inventory.

The Master: As a judicial finding by proper authority.

46327

Mr. Chambers: An order of the Public Service Commission permitting the issuance of bonds, as some evidence of the value of property?

The Master: Has the Public Service Commission any right to authorize the issue of bonds that do not represent property?

Mr. Chambers: They do not take into consideration the situation like you would in a rate case. I don't think it is any evidence in a rate case of the value of property.

Mr. Ransom: These opinions show that the entire inventory was gone over by the Commissioner's engineers.

46328

Mr. O'Brien: The Courts have long since discarded capitalization as proof of value. It does not make any difference if the Court itself, instead of the P. S. C., made some finding in respect to bonds.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits Nos. 412 and 413. These are contracts between the Standard Oil and the Kings County Company.

The Master: How is that any different from the others all the way down there, that were received?

Mr. Chambers: Do they run all the way down?

Mr. Ransom: The first ones are a little more recent.

46329

Mr. Chambers: Do you remember the trouble I had to prove the signatures to these contracts before I offered them? They did not prove any signatures, or anything.

The Master: What I am getting at is the difference between those two contracts and all the other contracts offered by the complainant.

Mr. Chambers: Possibly not. Let me look and see if he did prove the signatures of any. It is my recollection that he just offered them in evidence without

46330 proving them at all. We took the pains to prove our contracts.

Mr. Ransom: Yes, and you did many other unnecessary things.

Mr. Chambers: I will make the motion as to all the others, 412 down to 456 inclusive.

The Master: On the ground that they are not properly proved?

Mr. Chambers: Yes, and on the grounds urged at the time they were offered.

The Master: Motion denied.

Mr. Chambers: Exception.

46331 The Master: Here is 462, another one. Does your motion relate to that also?

Mr. Chambers: I am not so sure that he did not recall the witness there and offer some proof about that, that might not be included on the ground that it was not properly proven, but it might be included on the grounds urged at the time it was admitted

The Master: I will make the same ruling down to 456. You can make your motion as to that one when you reach it.

Mr. Chambers: I move to strike out Complainant's Exhibit No. 467, being pages 1 to 21 of the first journal of the Consolidated Gas Company, on all the

46332 grounds stated at the time it was offered.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits Nos. 469 and 470, on the grounds urged at the time those exhibits were offered in evidence.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits 471, 472, 473, 474, 475 and 476, on the grounds stated at the time they were offered in evidence.

46333

The Master: Those were the schedules offered by Mr. Carter in connection with his testimony?

Mr. Chambers: Yes.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits 479, 480, 481, 482, on the grounds urged at the time they were offered in evidence.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 485, on the grounds urged at the time it was offered in evidence.

The Master: Motion denied.

46334

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 486, on the grounds urged at the time it was offered in evidence.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 487, on the ground that it is a tabulation of oil contracts, and the oil contracts were not properly proven and were improperly admitted.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 488, upon the ground that it was not properly proven.

46335

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibits Nos. 489, 490, 491, 492 and 493, on the ground that they were not properly proved.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 494, on the grounds urged at the time it was admitted in evidence.

The Master: Well, this memorandum would indicate that No. 494 is the same as 372.

46336

Mr. Ransom: No, it was 372 in the prior suit. 493, 494 and 495 were in connection with the Mayer testimony in the prior suit.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 495, on the grounds urged at the time it was admitted in evidence.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out the summary schedules A, B, C, D, E and F, being Exhibit 496, on all the grounds stated for striking out the exhibits from which the summary is made,

46337 being Exhibits 471 to 476, inclusive.

The Master: Motion denied.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 497, on all the grounds stated at the time it was offered, being summary of cost of property claimed by the complainant to be used in its gas business, together with working capital and value of franchises.

The Master: I will deny that. It is only a summary statement of claim.

Mr. Chambers: There is no testimony showing what the value of the franchises is, or what they paid for it, and so on.

46338 The Master: Then it is of no value in the case. I am taking it as a mere statement of claim.

Mr. Chambers: Exception. I move to strike out Complainant's Exhibit No. 498 on all the grounds urged for Complainant's Exhibit 364, and other Teele exhibits.

The Master: What is Exhibit 498?

Mr. Chambers: Comparison of earnings as shown by Teele.

The Master: I will reserve decision on that.

Mr. Chambers: I move to strike out Complainant's

46339

Exhibit No. 499, extract from the minutes of the Executive Committee.

The Master: I will reserve decision.

Mr. Chambers: I move to strike out the Woods' Exhibit No. 500, being summary of charges paid by the Consolidated Gas Company for use of properties of other companies, upon the ground that it is a hearsay piece of evidence, and founded on records and books not in evidence.

The Master: That was the Woods' report, wasn't it? Motion denied.

Mr. Chambers: Exception.

Mr. Clark: It was read right into the record. 46340

The Master: The motion as I understand it then is to strike out so much of Woods' testimony as is contained in those pages covered by the report. The motion is denied.

Mr. Chambers: Exception. I haven't got a list of all the exhibits after 501.

Mr. Ransom: For the reason that there are not many after that, except defendants' exhibits, perhaps. I suppose half an hour could be occupied in moving to strike out defendants' exhibits.

Mr. Chambers: What ones are after 501 on your list?

Mr. Ransom: None, except defendants' exhibits. 46341

Mr. Chambers: I want to move to strike out some exhibits which the Master offered in evidence the last day of the hearing, as I remember it, and they are marked defendants' exhibits, and I haven't the numbers just now.

Mr. Ransom: Well, you mean the documents that Mr. O'Brien insisted upon having in the record, you are referring to a AA-525 and 526?

Mr. Chambers: Yes.

46342

Mr. Ransom: 525 shows the gas made by various plants, and 526 shows the send-out by days.

Mr. Chambers: Yes, AA-524, 525 and 526.

The Master: Motion denied.

Mr. Chambers: Exception.

Mr. O'Brien: Then there was a chart showing temperatures at 14th Street and Avenue A, I do not know the number of that, but it was offered in evidence by the Master and called a defendants' exhibit, temperature chart taken at 14th Street and Avenue A.

Mr. Ransom: Oh, you mean the temperature of

46343 the mains?

Mr. O'Brien: Yes.

Mr. Ransom: That came up in the course of Mr. O'Brien's cross-examination.

The Master: Yes, I remember this very well, and you move to strike that out, do you?

Mr. O'Brien: I so move.

The Master: Motion denied.

Mr. O'Brien: Exception.

The Master: I kept it out, but Mr. O'Brien insisted upon opening the door, and let it in.

Mr. O'Brien: I was charged with opening the door by the doorkeeper.

46344 The Master: And I sent the exhibit through the door, but I do not think it makes a bit of difference in this case. As I recall that pressure chart exhibit, Mr. O'Brien, Mr. Edgerton wanted to testify as to some pressure he found at the works, on which he wanted to base a statement as to what the pressure might be, or what it should be or what it would be on the mains.

Mr. O'Brien: Yes.

Mr. Ransom: Your Honor is thinking about a different matter.

46345

The Master: What?

Mr. Ransom: You are thinking about a different matter.

The Master: No, I know I am thinking about a different matter than the temperature on some mains; I am talking about pressure charts.

Mr. Ransom: Mr. O'Brien, I take it, is referring to the temperature charts on this by-pass—

Mr. O'Brien (interrupting): We have finished that, we have already laid that to rest.

The Master: We are on pressure now.

Mr. Ransom: I could not get Mr. O'Brien to put in the pressure charts.

46346

The Master: I know that, but I want to get this one thing clear in my mind now, because assuming that I understand the situation, I have reached a conclusion about it. As I understood it, Mr. Edgerton wanted to testify, or you wanted him to bring out by questions as to what he found with reference to some pressure at the works, from which he wanted to draw inferences as to what the pressure might be on mains, isn't that so? And I ruled it out, I refused to take that.

Mr. O'Brien: That was not the whole scope of the testimony he would offer.

The Master: Well, that was part of it that I ruled out, wasn't it?

46347

Mr. O'Brien: Yes.

The Master: You did not attempt to prove in any way by any witness what the pressure actually was on the mains at different sections of the city?

Mr. Ransom: On the districts?

The Master: On the districts, yes.

Mr. Ransom: The thirty-three districts which the city has been divided up into.

Mr. O'Brien: I don't know.

46348 The Master: I am just asking Mr. O'Brien something to get it clear in my mind, Mr. Ransom, if you will keep quiet.

Mr. O'Brien: He has not learned that lesson yet.

The Master: Am I not right about my understanding? You did not attempt to prove—

Mr. O'Brien: I do not recall now that any witness went into the question of pressure, certainly the complainant's witness did not.

The Master: And you did not offer any?

Mr. O'Brien: On what, off the district?

The Master: You did not offer any?

46349 Mr. O'Brien: We offered a witness, Mr. Edgerton, to prove various things from his investigation.

The Master: Well, can't you give me an answer to this one inquiry? Mr. Edgerton was not prepared to testify to the pressure on the districts, was he, except as he drew inferences from some pressure that he found or wanted to testify he had found at the works, isn't that so?

Mr. O'Brien: Well, he did not give any testimony about pressures on the district?

The Master: No.

Mr. O'Brien: He was not allowed to go any further than he did; he was nipped in the bud.

46350 The Master: I am trying to get this clear in my mind; if you do not want to answer it, just say so: You tried to prove by him what he found to be the pressure at the works, isn't that so?

Mr. O'Brien: Yes.

The Master: And I refused to take that?

Mr. O'Brien: Yes.

The Master: Beyond that, and beyond the fact that based on that he wanted to draw inferences as to what the pressure would be on the districts, no proof was offered by anybody as to what the pressure was on the districts, isn't that so?

46351

Mr. O'Brien: I do not recall that there was any proof in the case on the question.

The Master: No.

Mr. Ransom: If your Honor wishes to be reminded, there was testimony by the witness Hine on cross-examination that he had always found the pressures very good.

The Master: Yes, I recall that.

Mr. Ransom: He had never found any violations of orders.

The Master: Yes, but what I mean was the precise matter of pressures on the districts.

Mr. O'Brien: What is the use repeating that now, Judge, when we have got through with the trial of the case, let's not have any cross fire of this kind. You are referring to some document that was put in evidence over our objection. 46352

Mr. Ransom: No, I am referring to Mr. Hine's oral testimony.

The Master: It was a question put to Mr. Hine.

Mr. O'Brien: That was at the time you had the appendix to Oscar Straus' opinion, you had the appendix here, as of some date in 1913.

The Master: What?

Mr. O'Brien: Now, let's not fool each other.

The Master: 1917. 46353

Mr. O'Brien: I think, your Honor, that the appendix ran back to an earlier date.

The Master: The order was made on the 13th of October, 1917, the opinion says that since January 1st—from January 1st to the present time Mr. Hine has supervised tests in these stations, which I take it, the table being headed January 1st to August 31st, means 1917.

Mr. Ransom: But the present matter came up on oral testimony of Hine, and has nothing to do with this defendants' exhibit.

46354 Mr. Chambers: I move to strike out the testimony of the witness Colin C. Simpson, deceased, upon the grounds urged at the time his testimony was read.

The Master: I will deny the motion.

Mr. Chambers: Exception.

The Master: The same ruling as to Mayer's testimony.

Mr. Chambers: I move to strike out all of Mayer's testimony on the grounds that it is a subject of opinion testimony and also the witness, Preiss, on all the grounds urged for striking out the testimony of Simpson.

46355 The Master: Motion denied.

Mr. Chambers: Exception. Also the testimony of Preiss upon the same grounds.

The Master: What did Preiss testify to?

Mr. O'Brien: Real estate.

Mr. Ransom: Real estate as of 1906.

The Master: Motion denied.

Mr. Chambers: Exception. Also the testimony of James E. Allison.

The Master: That was on the question of depreciation of return on investment?

Mr. Ransom: Both.

The Master: Allison testified as to both.

46356 Mr. Ransom: He testified principally as to the depreciation, or the absence of depreciation, and he testified on two or three incidental matters.

The Master: I will deny the motion.

Mr. Chambers: Exception.

Mr. O'Brien: I assume your Honor will lay him at rest with the witness Miller.

Mr. Ransom: With Maltbie.

Mr. O'Brien: In the same plot. The same plot will hold them both.

The Master: You wait to see my report on that general question.

46357

Mr. Ransom: The professional depreciationist, and the professional—

The Master: Are you looking for the testimony that was given on that matter of return, the testimony of that banker, McMillan?

Mr. Chambers: Yes, I move to strike out the testimony of the witness, McMillan.

The Master: I will reserve decision on that. What is his name?

Mr. Ransom: Emerson McMillan.

Mr. Chambers: On the grounds we urged at the time he was called as a witness.

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The Master: I have had some doubt as to whether that was the subject of expert testimony. I will decide that when I frame my report.

Mr. Ransom: I think it was expressly received in the rate cases in the Supreme Court.

The Master: It may have been. I have not reached any conclusion on it, but I have it in mind as one of the things that I want to reach a conclusion on.

Mr. Ransom: The judgment of bankers and investors and their experience in getting money has an important effect in reaching a conclusion.

Mr. O'Brien: Well, he confessed he is looking for 30 or 50 per cent for his.

46359

Mr. Ransom: He is like you landlords.

Mr. O'Brien: Thirty per cent.

Mr. Ransom: Where you want 30 per cent over all overhead, you said yesterday.

Mr. O'Brien: Your Honor, when McMillan was put on the stand I think you assumed he was going to talk on what would have been the fair return in various lines of business to bring that within the scope of the requirements of the Lincoln Gas decision, but it took a different turn and he gave testimony as to what investors, bankers and others would look for in investing money in a plant.

46360 Mr. Ransom: Well, the Supreme Court indicates very clearly in its opinion in the Lincoln Gas case, as it has in other cases, that you have got to prove by testimony of the investors and bankers and the like, what they expect and what is found in the locality to be necessary in order to attract money into an enterprise of a public utility character, and it cannot be a mere matter of opinion, of what will attract money into an enterprise, it is a question of fact under differing conditions, and that is why the rate of return varies.

Mr. Chambers: That motion to strike out includes, I take it, the testimony of these dead men that was
46361 read on rebuttal, when quite a little bit of it was read.

The Master: Of Mayer and Simpson?

Mr. Chambers: Yes.

The Master: Yes, certainly.

Mr. Chambers: Now, it may be that Col. Hayward and Mr. O'Brien have some motions to strike out.

The Master: Mr. O'Brien, have you any motions to strike out?

Mr. O'Brien: No.

The Master: Have you, Col. Hayward?

Mr. Hayward: No, nothing more.

Mr. O'Brien: It is understood we are joining in
46362 the motions already made.

The Master: Yes.

Mr. O'Brien: And with the exceptions taken by the Attorney General.

The Master: Yes. Now, I would like to have the motions to dismiss simply in the form—oh, you have some motions?

Mr. Ransom: Yes.

The Master: Proceed.

Mr. Ransom: The complainant does not regard it as necessary to restate the various objections made by the complainant to the receipt of testimony and ex-

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hibits offered in evidence by the defendants. We do not think that we are obliged to renew this in the form of grounds for motions to strike out documents and testimony taken at the time they were offered. I shall not consume the time necessary to make seriatim motions of this character, but shall rely on the objections made at the time of the receipt of those documents, and upon the defects, errors and other details of incompetency and unreliability developed upon the cross-examination of the witnesses who respectively offered such testimony and exhibits.

The Master: All right. Now, we will hear motions to dismiss. My idea was to simply make the motions, 46363
stating the grounds and then I was going to take up in order the various details of the basis of complainant's claims here, and discuss each one of them in detail, for I think it will save time if we do not try to discuss a motion to dismiss now.

Mr. Chambers: Well, I would like to state upon the record that because we have moved to strike out certain exhibits and certain testimony we do not mean by that to waive objections and exceptions which we have taken from time to time to various testimony.

The Master: No. You have already got that on the record.

Mr. O'Brien: It is understood also that the motions 46365
made, with the statements made in connection with the motions to strike out, is not limited to the grounds therein stated, but we rely also upon those motions and the motions as stated at the time that the exhibits were offered.

The Master: Yes.

Mr. O'Brien: In other words, we do not intend to limit the scope of the objections made at the time the exhibits went in.

The Master: I shall consider in connection with motions to strike out anything that has been said to-

46366 day or that was said when the testimony was offered. I am not considering the matters that you gentlemen may not have thought of up to this time, or may not have called to my attention. Now, the motion to dismiss, Mr. Chambers.

Mr. Chambers: Yes.

The Master: I take it that you renew the motion you made at the close of the complainant's case?

Mr. Chambers: I now move to dismiss the complaint upon the grounds that the complainant has failed to establish facts sufficient to constitute a cause of action.

46367 The Master: Well, you are going to repeat all the grounds stated at the close of the complainant's case, aren't you?

Mr. Chambers: I am going to change them somewhat; of course that is a repetition.

The Master: Well, state it all.

Mr. Chambers: Second, the complainant has failed to establish any cause of action.

Third, that the complainant has failed to show that Chapter 125 of the Laws of 1906, insofar as it establishes a rate to be charged for gas in the City of New York of 80 cents per thousand cubic feet is confiscatory in that it does not allow a fair return on the

46368 capital invested in the business of making and distributing gas; and upon the further ground, in connection with that third ground, that it now affirmatively appears that the complainant has enjoyed a fair return under that statute.

Fourth, that complainant has failed to prove what it costs to make and distribute gas to its consumers.

Fifth, that complainant has failed to prove the amount of capital actually invested in making and distributing gas upon which it would be entitled to a return.

Sixth, that complainant has not shown, nor does it

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claim that it cannot earn and does not earn, sufficient to pay 7 per cent in dividends on its entire capital stock although a large part of its capital stock is invested in the stock, bonds and obligations of other companies.

Seventh, that complainant has failed to establish beyond a reasonable doubt that Chapter 125 of the Laws of 1906 is unconstitutional.

Eighth, that complainant has failed to establish that it has complied with all the provisions of said Chapter 125 of the Laws of 1906, and has furnished to the public gas having a lighting capacity of 22 candles, and as a matter of fact it now affirmatively appears that complainant has not complied with all the provisions of said Chapter 125 of the Laws of 1906. 46370

Ninth, that the evidence produced by complainant tends to establish that it has received an average rate of return from 1906 to 1919, inclusive far in excess of 6 per cent.

Tenth—

The Master (interrupting): How much do you say it was in excess of 6 per cent during those years, on the average?

Mr. Chambers: In excess of 10 per cent.

The Master: What is your contention on the record?

Mr. Chambers: Well, I think it shows from the testimony already in that that is so. I think we could give you exactly what we claim. 46371

The Master: Well, I am going to get at it a little later.

Mr. Chambers: It is higher than that.

Tenth, it appears from complainant's own proof that the average rate of return from 1906 to 1919, inclusive has not been less than 6 per cent.

Eleventh, that in order to determine the fair value of property that complainant used to supply its consumers with gas, and to determine the fair and reason-

46372 able cost of producing and distributing and selling gas to its consumers, it is necessary to consider not alone the property and operating expenses of complainant, but also the property, operating expenses and operating methods of the companies whose stock is all held, or the majority of which is held by complainant; which companies are Astoria Light, Heat & Power Company; East River Gas Company of Long Island City; New Amsterdam Gas Company; Standard Gas Light Company of the City of New York; New York Mutual Gas Light Company; Central Union Gas Company; Northern Union Gas Company; New
46373 York Edison Company; The United Electric Light and Power Company; National Coal & Coke Company; and complainant has offered no proof as above indicated as to the above-named companies. I might say no competent proof as to the above-named companies as above indicated.

Twelfth, that the constitutionality of the statutes in question cannot properly be determined by the facts applicable to complainant when it appears as here that a number of other companies supply gas in the same territory, and where it further appears that the distribution system of complainant is intermingled with the above-named companies, and where their manu-
46374 facturing plants are distributed throughout the same territory, and particularly where it appears that complainant owns more than a majority of the stock in each of the above-named companies, and where gas is purchased and sold between those various companies and where the gas supplied to consumers of complainant is intermingled with the distribution system of all the above-named companies.

Thirteenth, that it affirmatively appears that complainant is combined with the following companies: Astoria Light, Heat & Power Company, East River Gas Company of Long Island City, New Amsterdam

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Gas Company, Standard Gas Light Company of New York, New York Mutual Gas Light Company, Central Union Gas Company, Northern Union Gas Company, to supply gas in the City of New York, and enough has been shown by complainant's own proof to indicate that it is really complainant operating under various names, and for that reason the Court cannot determine the constitutionality of the acts in question without ascertaining the fair value of all the property of the above-named companies used in producing, distributing and selling gas in the territory commonly occupied.

Fourteenth, the defendants say respectively they 46376
have not had their day in court. Such as they feel the constitution of the United States guarantees them, that some of the reasons assigned are these: Common-law proof was dispensed with, as in the case of the books of the complainant; the right to be confronted with witnesses and the right to cross-examine them has been denied; cross-examination of witnesses called has been curtailed, limited and, in some instances stopped completely; the burden of proof has been erroneously shifted from the complainant to the defendants.

And upon all the grounds that were made at the close of complainant's case, and specifically found in the record at pages 8995 to 9017. 46377

Mr. O'Brien: Your Honor, the motion made by Mr. Chambers, I concur in and join in in behalf of the defendant Edward Swann, and in view of the fact that he has embodied all of the grounds offered at the close of the plaintiff's case, I will not go into detail with those that were mentioned by me at that time. I would however, so that I won't overlook further grounds, state a few things that may present something new as well as overlap something already said, and I urge as an additional ground that the testi-

46378 mony disclosed in this case shows a situation where it is impossible to determine the issue in the case with justice to the defendants, without taking in the whole system of the parent company; that the testimony shows such an interlocking, legal, financial and physical, in the gas business of the Consolidated Gas Company and its subsidiaries as to make it impossible to arrive at any fair conclusion without having before the Court a fair value of the properties of those subsidiaries, of moneys expended by them, the books and records and underlying data of each of those companies, and the
46379 whole scope of information as to them that we ought to have as to the parent company. I urge further, as an additional ground, and as a fatal defect in this case, that there has been no attempt made to separate the cost of making gas which has been sold to the City of New York. It is necessary in view of the fact, say, that in the year 1918—well, I was going to say that in the years in question involved in this case that a very considerable amount of gas was sold to the City of New York, and if the City is eliminated from the case as a party defendant and an attempt is made to arrive at the cost of making gas to the consumers, it will be absolutely essential to have that whole
46380 thing separated in the case so that you might conclude as to the cost to the company making the gas that was furnished to consumers other than the City of New York.

I urge again, if it has not been already urged, that the complaint should be dismissed on the ground that the City of New York was not made a party, on the ground that the error was committed in the various rulings that we have objected to throughout the trial in allowing in testimony of a vital character which was inadmissible.

The Master: I am anxious, if I can, this afternoon,

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to indicate the procedure that I want to follow in getting at the facts here, so that we can get along a little more rapidly tomorrow. Is there anything else on motions to dismiss? If not, the motions will be denied and exception allowed.

Now, gentlemen, as I understand this case, the complainant claims that in order to make water gas it requires certain material and labor, and the first thing I want to know is where there is any difference in claim as to what is required, not as to quantities or as to values or amounts just yet, but just the classes. The complainant claims, as I understand it, that in order to make water gas they need fuel for generators and 46382
boilers. Is there any dispute by the defendant that that claim is correct? I assume, hearing nothing to the contrary, that there is no question but what in order to make water gas the company must have coal for its generators and boilers.

Mr. O'Brien: Well, now, I want to say to your Honor right here, that if you think you are going to reduce the summing up on my part or on the part of the other defendants to a question and answer basis, where you will heckle me and heckle Colonel Hayward and heckle Mr. Chambers, asking such questions as you see fit, that I am going to stand on my right to sum up this case in my own way.

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The Master: Well, all I can indicate to you, Mr. O'Brien is—

Mr. O'Brien (interrupting): I am going to give you my reasons why I think this complaint should be dismissed.

The Master: I am going to find out, if I can, what the claims of the defendants are.

Mr. O'Brien: You have asked a lot of questions during this trial at various times during the trial, we put in such proof as we sought to put in: if you think now that you are going to reduce my argument to a

46384 yes or no answer to some questions that you see fit to ask, why, you might as well understand now that I am going to insist upon my right to present my argument in my own way.

The Master: And the Master is going to insist upon his right to find out what the points of contact are, and what he has got to decide as the disputed issues.

Mr. O'Brien: You have already said that you wanted to receive briefs, you did not want any proposals to find, you were going to make your own findings.

46385 The Master: Yes.

Mr. O'Brien: And we will stand on that record. So far as answers to questions are concerned—I have got a right in summing up here to present to you whatever facts I think bear upon the case.

The Master: I am not going to deprive you of that right.

Mr. O'Brien: If you do not see fit to hear that argument, I will take my exception and stand upon the record that is made.

The Master: I am not going to deprive you of the right to present anything you want on this record, but I am going to insist upon my right to find out what

46386 the points of contact are, and what issues I have got to determine.

Mr. O'Brien: I am not going to reduce this thing to any concessions. You have heard my testimony presented—

The Master (interrupting): I am not asking you for any concession. I am asking you whether you contend that coal is not necessary in the manufacture of water gas.

Mr. O'Brien: I am not going to engage in an argument with your Honor, and that is just about what it will be, and what we have had since we first met you in this case.

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The Master: I am not going to argue, or ask you to argue with me. I am going to ask you to tell me what your claim is. Mr. Chambers, are you prepared to answer that question?

Mr. O'Brien: I am going to tell you why I think this complaint should be thrown out. If you say you won't receive that in the way I want to give it to you, I will take an exception to your ruling.

The Master: You have said that already several times. Mr. Chambers, do you contend that coal is not necessary for the generators in the making of water gas? Is there any issue about that?

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Mr. Chambers: I think that that—I think we have offered some proof along the lines that some coal is necessary.

The Master: You might just as well understand that I am going to get at the facts in this case, and if counsel are not prepared—

Mr. Chambers: I do not want you to cross-examine me, though.

The Master: If counsel are not willing to help the Master find out what the question is and what the dispute is about—

Mr. Chambers (interrupting): I don't know what you have in mind.

The Master: I am going to tell you.

46389

Mr. Chambers: I don't know what you want to follow this up with.

The Master: It is not a game of chess. This is not a game of tricks. I am trying to find out what the conflicting claims are. Mr. Ransom's claim is—

Mr. Chambers (interrupting): We admitted on the trial that they needed some coal and some oil. Your Honor is only asking me something I said before.

The Master: I am going to find out where the dispute is, and I am not going to spend the rest of my

46390 life writing opinions about something there is no dispute about.

Mr. Chambers: Well, I don't see why the Master should at once address this question to us. The burden is on them.

The Master: I understand their claim.

Mr. Chambers: Why do you ask us to answer questions on which there could not possibly be any difference presented.

The Master: Well, I wanted to see where the difference begins. Now, I understand perfectly the complainant's claims. They claim that it requires
46391 32 1/2 pounds of generator coal to make a thousand cubic feet of gas, and it requires 2 1/2 pounds of boiler fuel, and so on. Now, I first wanted to eliminate any question as to the character of material and the classes of labor and expenditures, and then I was going to come back and likewise ask whether there was any residual you claimed should have been produced that they have not said was produced.

Mr. O'Brien: Well, we have not taken the position, your Honor, that they are making gas in the only way. Can't you see that attempting to narrow the issue down like this, that you are doing us an injustice? We assert that they have got to come into court, and it is up to
46392 the complainant in this case to prove that they are making gas in the best way, the most economical way, the most efficient way, and prove what the various ways are of making gas, and show that they are making it in the best way. Now, that opens a broad, wide field, and then from the outset, instead of asking me what I think, or Mr. Chambers what we think about boiler fuel, the question should be asked of the complainant in this case—

The Master (interrupting): It is not a question of what you think at all.

Mr. O'Brien (continuing): How have you met

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the requirements? This is a question you should put to the complainant—how have you met the requirements in rate cases, and met the burden of proof?

The Master: It is not a question of what you think at all, Mr. O'Brien. I state as a fact that my recollection is, and my mind is clear, that the complainant has proved in its case certain things, and I want to see whether counsel agree to that, and whether there is any dispute about it.

Mr. O'Brien: My contention is that they have not proven just what you say.

The Master: What? That they need generator coal?

46394

Mr. O'Brien: Well, the fact that they need generating coal of a particular kind will depend upon what kind of system they are working.

The Master: I am talking now about the record in this case?

Mr. O'Brien: You are talking about coal. We are prepared to sum up this case, and you are trying to narrow it down simply by asking us what we will concede and what we won't concede, and what are the points of contact, and what they need.

The Master: Yes.

Mr. O'Brien: And my answer to that is that they have the burden of proof in this case, and have not met it, and instead of asking us the questions, you ought to ask them of the complainant.

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The Master: I am entitled to know what the facts are, and what the contentions are, and I am going to have them, and I am entitled to have them on this record, and if you or other counsel can reply, I am going to get it, and you might just as well understand it now as at any other time.

Mr. Chambers, I am going to address my questions to you, and see if I can get my answers here. Is there any dispute or do you dispute the proof offered

46396 by the complainant that they use anthracite coal for boiler fuel in the making of their water gas?

Mr. Chambers: Do you mean use any at all?

The Master: Yes, that is all I want to get just now.

Mr. Chambers: I am sure I don't know a thing about whether—I do not think there is any proof here, really, that they did, except Mr. Woods' hypothetical—that is just the point, I think they would need some, and I think they ought to prove just what it was by the superintendents.

The Master: Then your contention is that there
46397 is no proof in this case that they have, in fact, used any anthracite coal for fuel?

Mr. Chambers: No competent proof—in the making of the actual gas that they sent out.

The Master: That is your contention, is it?

Mr. Chambers: Yes—competent proof, let us say.

The Master: Is that your contention, Colonel Hayward?

Mr. Hayward: No.

The Master: Is it your contention that there is not any proof in this case that they require any labor for the handling of fuel?

Mr. Chambers: That there is not any proof?

46398 The Master: Yes.

Mr. Chambers: I think there is some proof of that.

The Master: And you agree to that, I take it, Colonel Hayward?

Mr. Hayward: Oh, yes, absolutely.

The Master: I will assume that if Mr. O'Brien does not agree to something I will hear from him. Do you concede, Mr. Chambers, that there is some proof in this case that they require gas oil for the making of water gas?

Mr. Chambers: You are speaking now of competent proof?

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The Master: Yes.

Mr. Chambers: I have my doubts whether there is any competent proof of that.

The Master: Well, is it your contention that water gas can be made without oil?

Mr. Chambers: Oh, that is if you are making water gas.

The Master: I won't bother you, Mr. Hayward, to answer it, because I know what you will say. How about iron mass, do you say there is not any competent proof that they use iron mass?

Mr. Chambers: Yes, I think that is so. I would want to think it over a little more carefully. My 46400
contention is they have not proved it by competent proof.

The Master: But your contention is that they need it?

Mr Chambers: Oh, yes, I think they do.

The Master: The proof offered by the complainant is that they get two residuals from water gas manufacture, namely, tar and drip oil. Is it your contention that there is any proof they do not get those residuals, or that they get other residuals, or that they should get other residuals?

Mr. Chambers: I do not think I am competent to say about that.

The Master: What? 46401

Mr. Chambers: I do not think I am competent to say.

The Master: You do not know this case yet?

Mr. Chambers: Well, you are asking me if they could get anything else out except tar and drip oil.

The Master: No, is there any proof in this record, or anything offered by anybody, on which I could find that they could have gotten other residuals than tar and drip oil?

Mr. Chambers: Yes, I think there is.

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The Master: What is it: that is what I want to know?

Mr. Chambers: Let us see.

The Master: What else is there in the record on which I could find that they should have gotten something else?

Mr. Chambers: Ammonia.

The Master: From water gas?

Mr. Chambers: Well, that is from coal gas.

The Master: What?

Mr. Chambers: I see; you are limiting it to water gas, are you?

46403 The Master: Yes, I am talking about water gas. Now, of course, if the attitude of counsel for the defendants is to confuse this issue, rather than to clarify the issue—

Mr. Chambers: No, that is not mine.

The Master (continuing): Why, we might as well understand it. I am here to clarify this issue.

Mr. Chambers: No, the trouble is you are speaking of competent proof. All I can remember is that they really proved some hypothetical costs by Woods on these different subjects, but they did not call any superintendents or anybody that actually made gas and that operated the machine.

46404 The Master: I am talking now about the testimony of Mr. Woods, who makes gas.

Mr. Chambers: I have his exhibit before me.

The Master: He says when he makes water gas he uses certain materials and gets certain residuals. Now, his testimony is that from water gas he gets water gas tar and drip oil as residuals, and that is all he did testify to, as I recall. Now, I want to know if there is anything in this record on which I can find that there are other residuals obtained, for which credit is not given.

Mr. Chambers: That is what I was trying to think.

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whether our witnesses testified to anything else. I cannot remember now whether there was anybody else testified to anything else except tar and drip oil. I see that that is all that we have testified to. I do not remember whether there was any other testimony.

The Master: All right. Now, Mr. Woods testified that in order to make a thousand cubic feet of water gas he needs and actually uses an average of 32 1 2 pounds of generator fuel, fuel to the generators. What is your contention with reference to the record as to that claim?

Mr. Chambers: I take the position I took then, that it depends on the skill of the operator, the quality of 46406
the coal, the condition of the machine, and whether the machine is of an improved kind or not, and all that. I said then and I say now that you cannot sit down and say it will take so many pounds of coal to make a thousand cubic feet of gas, that it cannot be done: that that is not the way to do it, that I don't subscribe to that method. That is my contention, and I say it fairly, and the engineers tell me that that is so.

The Master: Well, so far as this record is concerned, what proof is there, other than the proof of Mr. Woods, that that is so?

Mr. Chambers: As to the number of pounds of coal it takes to make water gas? 46407

The Master. Yes.

Mr. Chambers: I cannot remember now. I am not prepared to say: I did not look it up.

The Master: Well, when will you be?

Mr. Chambers: Well, I was going to ask you for two weeks more. I am not prepared to sum up. I was going to be frank with you and say that.

The Master: You are not prepared to say now, after having been in this case for eight months, what your position has been or what the proof in this case

46408 has been with reference to the average amount of generator fuel needed?

Mr. Chambers: I have just told you what my position is all along. I say, and I told you so when the testimony was being offered, and when I objected to this Exhibit 353 for identification, which afterwards became Exhibit 353, I think, that there is no set formula for a number of pounds of coal for making water gas.

The Master: Did any witness testify to that?

Mr. Chambers: And I will never subscribe to it.

The Master: Well, did any witness testify to what

46409 you now say?

Mr. Chambers: In my judgment the way to do that would be for them to show first what kind of machines they had, the efficiency of the machines, whether they were kept in repair, what kind of coal they used, what kind of coal they bought, and so on, and whether the men who operated the machines were competent and efficient. Now, that is my position.

The Master: Well, you heard the testimony of Mr. Woods to the effect that he uses on the average 32 1/2 pounds of fuel to the generators, did you not?

Mr. Chambers: That was the complainant's the-

46410 ory of how they were going to show you what it costs.

The Master: You heard Mr. Woods' testimony, did you not?

Mr Chambers: I have it right here, 32 1/2 pounds.

The Master: All right. Now, did you offer any proof by any witness that Mr. Woods was wrong, or did any other defendant in this case?

Mr. Hayward: Why, I have an exhibit before me which clearly is contradictory of that statement by Mr. Woods.

Mr. Chambers: That is what I was just going to refer to.

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The Master: That is what I want, Mr. Hayward, to get the facts.

Mr. Hayward: Well, I have answered every question that you have asked me to the best of my ability, and I will continue to do that.

The Master: I know you have.

Mr. Hayward: If you want me to tell you what I have to say as to how to make gas, and the complainant company will take it, I will be very happy to do that. If you are simply going to ask me questions to bring a roar of laughter out of Judge Ransom's hand picked audience, I would be very bashful and shy about answering them. If you have any question that you would want my view upon, I would be glad to give it to you—a great pleasure to try to help on this thing. I will admit anything that is in this record.

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The Master: I told Major Clark some weeks ago, three weeks ago, that I would like him to prepare on that. He said he would do so, and I have no doubt that he has done so to the best of his ability. When I finish this record, I said, I want to take up each item of cost of production and distribution, see what the record shows—not hypothetical discussion, what might or what should have been, that comes in later on, by Mr. O'Brien, as to how the gas should be made by some other process. But what I want to get now, if I can—and it is not intended in any sense except to get the fact as nearly as I can accurately—and in my judgment I am going to get it better if counsel will co-operate with me than by taking briefs, because when I get briefs from all sides and read them I have no opportunity of asking counsel to explain or discuss with me a point made in a brief. I think it is a useless thing to take briefs for that reason. I know what counsel will say in briefs. I can write briefs for either side, based on my theory

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46414 of this case or on their theory of the case. But what I want to do is to have a gentlemanly discussion here to see if we cannot talk it over and get at the facts.

Now, basing my inquiry upon Mr. Woods' statement under oath that as the operating official of this company he requires 32 1/2 pounds of generator fuel to make water gas, what I would like to get is a reference, just as it would be in a brief, to the statement, "Why, that is not so, because their own record shows they only used 27, or 22," or something else, with a reference to the portion of the record which bears out the claim of the defendants.

46415 Mr. Hayward: Of course, we have not those figures for Astoria, but we have for 21st Street, and I know of no reason why they should not make the same amount of water gas there with the same number of pounds of coal.

The Master: I don't either.

Mr. Hayward: And starting in 1906, and up to 1918, there is no year up to then when they came anywhere near 32 1/2 pounds.

The Master: What exhibit are you referring to, Mr. Hayward?

Mr. Hayward: I am referring to Exhibit AA-398.

The Master: Can I have a copy of that?

46416 Mr. Hayward: I do not know whether there is another copy here.

The Master: I will want a copy of all these exhibits.

Mr. Hayward: Mr. Woods' testimony was that when the entire fuel used in the generators was coal, it took 32 1/2 pounds—wasn't it? I mean if he did not use anything but coal he used 32 1/2?

The Master: No, my recollection is in that respect that if he used part coal and part coke it amounted to 32 1/2 pounds.

Mr. Hayward: Well, that is the point I want to

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make, that the total sum of the fuel value was the equivalent of 32 1/2 pounds of coal.

The Master: Of coal?

Mr. Hayward: Of coal, yes.

The Master: That is my understanding of it.

Mr. Hayward: And, of course, this table shows the use of both coal and coke combined, coke being concededly of less value per pound than coal; and yet the value of the coal and coke in this table for those years nowhere approaches 32 1/2 pounds, and it seldom goes over 30. There (referring to exhibit) is 30 plus 1, 39 plus 1. Conceding the coke is of less value than the coal it won't take 32 1/2 (indicating). 46418 One pound of coke wa snowhere near as good as a pound of coal. Now, that is the year 1906 (indicating). 1907 it is less than 32, counting that as coal. That is under 30, that is under 30, that is just 30, that is just 30— it is less than 30; that is a little over 31 (indicating), but nowhere up to 32 1/2.

The Master: That is what I am trying to get at.

Mr. Hayward: I do not know whether we have a copy of that or not, and we have no such table covering Astoria directly; but it would seem that in twelve years the efficiency of a plant would increase rather than decrease, by modern application.

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The Master: Mr. Chambers, you have heard Mr. Hayward's answer to my inquiry?

Mr. Chambers: Yes.

The Master: Have you anything further to say about that, other than what Mr. Hayward said?

Mr. Chambers: I would like to look it up and give you—when he had suggested his answer I had already turned over in my mind certain tables that the defendants offered in evidence. I do not happen to have them all. That one I did not have. But I do recall that we showed in many instances how many

46420 pounds of coal they had actually used in each of these different plants. My recollection is—I may be wrong—that in some of their books it ran down as low as 27 pounds. It seems to me it was 26 in one case. I do not know whether it was 99th Street or 21st Street. Now, I would be glad to—

The Master: Well, Mr. Hayward has given me here Exhibit AA-398, which purports to show labor and materials used in production, with cost, 21st Street, through the years 1906 to 1918. Isn't the 99th Street table here?

Mr. Chambers: That is what I wanted to see.

46421 The Master: The same kind of a table for 99th Street?

Mr. Clark: Yes.

The Master: Well, let us see that. This, of course, is going to take a little more time, perhaps, than just hearing a lot of speeches; but I think I am going to get a better result and know what I am talking about when I get through.

Mr. Hayward (handing Master paper): There is another item of coke corresponding to coal added to the generator. There is a case where it adds 6 of coke (indicating), and there is 30, and 31, 26 plus 5 of coke, 29 plus 3 of coke. It is higher there (in-

46422 dicating), and there is one 21 plus 9. I want to call your attention to the testimony that coke per pound is not up to coal per pound, so that even if these totals run to 30 it leaves Mr. Woods' coal testimony out on a limb.

The Master: Mr. O'Brien, have you anything to say about this item that I am having under discussion, other than what Mr. Hayward and Mr. Chambers have said?

Mr. O'Brien: Well, on that particular item, your Honor, I have already spoken about the method that you are adopting, and the testimony in this case on

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the question of manufacture of gas might be summed up in the testimony of Mr. Woods on the one side and the testimony of Mr. Little on the other. Now, affirmative proof, so far as I am concerned, is in Mr. Little's testimony, and you are about as well acquainted with it as I am.

The Master: No, I am not. Mr. Little did not leave me a copy of his statement.

Mr. O'Brien: Well, it is in the record and you have been getting a copy of the record.

The Master: No, I have not had a copy of the record and I have not had a chance to read Mr. Little's testimony.

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Mr. O'Brien: And there is too much in this case to get down to a question and answer basis.

The Master: Well, I am going to decide that.

Mr. O'Brien: Right in connection with that matter your Honor, I want you to have your mind clear on it now, so that we will clearly understand each other, and I want to say it just as respectfully and deferentially as I can. But you hit right now a basic defect in their case, and that is this, that they have not brought in the underlying data and they have not produced for you the actual quantities that were used year by year.

Where I tried to have you receive the Marwick & Mitchell report, you said that is ancient history, and you would not take it in, and there was a whole compendium of information as to quantities used. The only reason in the world why that would not apply to the company at the present time would possibly be an assertion by some gas engineer that there was better coal used at that time than there is used today, or than was used in 1916, '17 or '18. So that, by making that ruling, you took out of this case just the answers to the questions you are asking now —quantities used.

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Then, again, we asserted later that as part of their case they should come forward and not give us an hypothetical statement by Woods, designed as a sort of Hindenburg Line to the production of their manufacturing reports, that they ought to come in and tell you what they actually had used in material; and if they did, right away you would have the facts as recorded in their books from year to year, and if you did you would find right at the outset something that would make you consider for some time the words of Mr. Woods—for instance, his assertion that it took 4.1 gallons of oil. And if you turn to the 99th
46427 Street manufacturing book you would find the lie given to his statement there, the recorded fact that it was 5.73 and 5.61, all the way, running up to 8.5

The Master: Mr. Ransom, will you—

Mr. O'Brien: Your Honor, to finish the statement, what I was driving at there—

The Master: It is finished, I have had enough.

Mr. O'Brien: The books that show these facts, the data, you have not required them to produce in court.

The Master: Yes, I understand all that.

Mr. O'Brien: There is very much and serious doubt now in the record as to whether the manufacturing
46428 books for 1918, of 99th Street and 21st Street, are in evidence or not.

The Master: Now, Mr. Hayward.

Mr. Hayward: You asked me the definite question and I have tried to answer it to the best of my ability, and before I leave it I would just like to complete it with this:

The Master will remember that I asked you for an order to give us the same sort of manufacturing books, the book that was called the black book from Astoria, that we had from 99th Street plant. Judge Ransom interposed one of his technical objections,

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that if we had access to that book we would have to offer the whole book in evidence. My recollection is that the Master said he would not rule one way or the other to require its production or otherwise with that condition he imposed staring the Master in the face.

Therefore, I appear to be helpless in the matter, toward getting that book. Before we leave this thing I want to tell you my view of the matter, which I would have taken up in the argument of the case, on this 32 1/2 pounds of coal urged by Mr. Woods. Taking into consideration the quality of coal that people may have gotten during the war period proper, 46430
or that they may reasonably expect to get in the future—taking that into view, I want the Master also to take into account these facts, that 21st Street and 99th Street, the tables that we have, are plants that must be—I forgot the years, but at least 15 years older than the Astoria plant.

One of two things must inevitably be true. There is no scientific apparatus but has in America increased greatly in efficiency in a period of fifteen years; I do not care whether it is a locomotive engine, or an Otis elevator, or what it is. No, one of two things must be true—either they can make this water gas at Astoria with much less coal than they made it in those 15 or 20-year old plants, 21st Street or 99th 46431
Street, or they must be bungling the job at Astoria, using very poor superintendence and very poor economies in that plant, either of which alternatives, and I do not care which you take, will benefit and certainly help our claim that 32 1/2 is way high on any estimate of coal.

It should be at least as low as 21st Street and 99th, even during a period of years; it should be lower, because of the modernness of those plants, and my own opinion is that if we could have had those books

46432 and a thorough examination of them, it would have shown somewhere between 28 and 29 tons of coal—

The Master: Pounds.

Mr. Hayward (continuing): Pounds, I mean, per thousand feet, instead of the 32 1/2 pounds. But we have gone as far as the Master would let us go to produce that evidence.

The Master: Now, I would like to hear what Mr. Ransom has to say about the point raised by Mr. Hayward, who points out that his exhibits show, based upon the records of 99th and 21st Street, that in practically every year, with perhaps only one exception, the amount of coal to the generator, or fuel
46433 to the generator, was less than 32 1/2 pounds.

Mr. Ransom: First, let me refer to what the record shows with respect to the last assertion made by Colonel Hayward, with respect to the relative age of the apparatus at Astoria and at 21st Street, and 99th Street. All of the machines except three at those plants were put in only five years before the Astoria water gas apparatus.

The Master: Where is that in the record?

Mr. Ransom: And five of them were put in only three years before.

The Master: Is that in the record?

46434 Mr. Ransom: It is in the record.

The Master: Have you the pages of that?

Mr. Ransom: It is in the Teele exhibit of additions to manufacturing plant.

Mr. Chambers: I do not think that is evidence.

The Master: Well, that is what Mr. Ransom says is evidence; that is what he claims the record shows. That is what I want to know.

Mr. Ransom: Now, as to the difference between Astoria—

Mr. Hayward: Excuse me just a minute, Judge Ransom. If it will throw any light on it, 44th Street—

of course, that is the one that was condemned—it runs just the same as the others, around twenty-nine or thirty. 46435

The Master: I will take these others for the basis of discussion. I do not want that.

Mr. Ransom: First, as to 99th Street.

The Master: You said something about Astoria. I am not talking about Astoria, I am talking about Mr. Woods' statement under oath that in order to make gas he needs on the average 32 1/2 pounds of generator fuel.

Mr. Ransom: Bearing on that, of course, is the experience at the different plants. 46436

The Master: Right. Now, Mr. Hayward says the experience shows that Mr. Woods is wrong.

Mr. Ransom: Taking for the moment the defendants' own exhibit, AA-399, which purports to relate to the 99th Street station in 1918, as for coal in generators, Mr. Woods' figure being 32 1/2—and I may say your Honor will recall that Mr. Woods testified very strongly and definitely that what he was basing his figures upon was all coal, of the kind that they have been getting for the past few years and are still getting—1918, in 99th Street, coal in generators was 31.6 plus and coke in generators .731 plus. In 1917 the coal only in generators was 31.13. 46437
In 1916 the coal in generators was 25.84.

The Master: Well, don't go all the way back.

Mr. Ransom: And so on. Now, at 99th Street, 1918, the coal in generators was 32.9 and the coke in generators was .84 plus, and the preceding year was 28.568 of coal and 3.269 of coke.

Mr. Hayward: In no year, even the worst of your coal years, coming up to Mr. Woods' figure in your own plants.

Mr. Ransom: 32 1/2 is obtained by a number of those figures. Now, with respect to the confirmation

46439 from the experience of the Astoria and the Consolidated itself, in the year 1918 at Plant C, which is the water gas plant of Astoria, according to the Sangster exhibit, Statement 7, Mr. Sangster's figures—

Mr. O'Brien: Why don't you call it the Astoria books?

Mr. Ransom (continuing): Gives 35 plus for coal and coke for the year 1918, and for the eight months of 1919 gives 36 plus. The Consolidated experience for coal in generators, 1918 and 1919, was 33 and 34, respectively.

46438 Mr. Clark: What is that from?

Mr. Ransom: That is from Exhibit 365, as to the Consolidated 364, and then our own computation—

Mr. Chambers: That is the Teele exhibit.

Mr. Ransom (continuing): Of the quantity used at Astoria under the generators in 1918, 35.23, eight months of 1919, 36.43.

The Master: Will you let me interrupt you a minute?

Mr. Ransom: Yes.

The Master: Major Clark's exhibit for 1918 would indicate that there was used at 99th Street and 21st Street less than 32 1/2 in 1918.

46440 Mr. Ransom: I see.

The Master: Do you say these exhibits are wrong in that respect, and that the books show something to the contrary?

Mr. Ransom: 99th Street?

The Master: Yes.

Mr. Ransom: Mr. Clark shows for 1918 coal and coke under generators—Mr. Woods' figure being 32 1/2, Mr. Clark's figure being 32 and something over 3/10ths.

The Master: How much coal?

Mr. Ransom: 31.605.

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The Master: And coke about 7, isn't it?

Mr. Ransom: .731. Making it within a fraction, a very slight fraction of 32. That is over 32 and within a—

The Master: Is there any dispute as to that figure? Is that exhibit right in that respect?

Mr. Hayward: They were taken from their records, if the Master please, they are from their books.

The Master: But there have been claims made, Colonel, that the figures taken off the books have not been accurately taken off sometimes, and I want to make sure if there is any such claim made at the time.

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Mr. Hayward: The claim should be made at the time, and it is not subject to attack now.

Mr. Ransom: I want to say that the figure showing as to 99th Street in 1918 the use of 31.605 of coal and .731 pounds of coke under generators probably was not far wrong, if at all, for that plant.

The Master: Let me ask you in that connection what you have to say as to Colonel Hayward's statement of it, that you must figure less than the total of that coal and coke when you talk about 32 1/2 pounds of fuel?

Mr. Ransom: We will take 21st Street at the same—

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The Master: No, I do not think you get my point. Colonel Hayward says when you talk about 31 and 7 for coke you have to really figure less than that added to the coal to make up the total amount of coal.

Mr. Hayward: I say that 32 1/2 pounds of coal is better than 31 pounds of coal plus a pound and a half of coke.

The Master: That is what I am trying to get at.

Mr. Hayward: So that in his maximum year, even with the use of coke, less efficient per pound than

46444 the coal, it did not run up in an older plant to Mr. Woods' estimate.

Mr. Ransom: My answer to that is that the experience of the Consolidated undoubtedly is that coke is not quite as efficient as a similar number of pounds of coal. For example, in 1918, in the twelve months, all of the plants of the Consolidated on this item, there was used 32.01 of coal and there was used .82 pounds of coke, which, you see, with coal and coke together gives a very slight fraction.

The Master: Yes.

Mr. Ransom: And in 1919 generator coal was
46445 19.30 pounds under the generators and 14.44 pounds of coke, which of course carries the combined figure a margin over 32 1/2.

Mr. Hayward: Go back to the years when your apparatus in 69th Street and 21st Street was new.

The Master: Just one minute, I have got to suspend at this point.

Mr. Ransom: Let me say just one thing.

Mr. Chambers: I just want to say that he is quoting from Teele's exhibit, which is no evidence at all, and you said you would not take it.

Mr. Ransom: Let me say one thing: That is further confirmed by the Sangster exhibit as well
46446 as the Teele exhibits on Astoria, where you find that coal and coke combined, instead of being 32 1/2, when you combine coke and coal at Astoria with a little preponderance of the coke, you get 35.23 pounds for 1918 and 36.43 for the eight months of 1919.

The Master: Now, Mr. Hayward, I am going to ask you something aside from this particular question.

Mr. Hayward: Just before we finish this, I want to say just a word.

The Master: I am not finishing it, I am just suspending it until tomorrow morning. I want to ask you this: I want to get your judgment about it.

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I have asked these questions and have opened this discussion as to this one item to give you gentlemen an idea how I am trying to get at the fact, or the facts, in this case. I want your honest judgment as to what you think of my practice, whether you think I am going to get a result this way, by picking out and arguing each item as we go along?

Mr. Hayward: I think, if the Master please—and I am not saying it because of my personal preference at all—I think that you will find it will take five times as long to put this on the basis of an informal debating society, which is the best we can make out of it with me interrupting Judge Ransom and 46448
Judge Ransom interrupting me, and taking up each point as it comes along in this sort of informal way, than we will if each side presents its case in an orderly way.

The way I would have presented this matter on the 32 1/2 pounds of coal would be, regarding these tables, to give the Master samples of the years and place them before you with the matters that I have brought to your attention, which could have been answered by Judge Ransom in an orderly method. I am personally very sure that you are going to make a mistake to start in on this long record in the way we have. This is only one of many things; each of 46449
us has made three or four speeches on it now. I would have covered the point in an argument or Judge Ransom would have in his argument, in twenty or thirty or forty words.

The Master: But won't I get a better result, don't you think?

Mr. Hayward: I do not think you will get anywhere near as good a result.

The Master: I see Judge Ransom shaking his head. You think I will.

Mr. Ransom: I think so, yes.

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The Master: I am going to do it that way, anyway.

Mr. Hayward: I thought you would. I told you I was going to give you my honest opinion on any questions. If you ask me any questions that you asked my colleagues I am going to say yes or no.

The Master: I tell you the reason I asked you what I did. I have written briefs before, I know what it means. I know what it means to say I will take briefs in this case. It will mean at least two months, and no human being could go through this record and read it and write it in two months. It

46451 means, then, that I have to read it over, it means as matters come up I have to lay it aside. I cannot possibly do it.

Mr. Hayward: I am prepared to argue the case, your Honor, and do it very briefly, and tell you everything I claim in this gas case inside of two hours.

The Master: I know that, but I want to get my facts right.

Adjourned to Tuesday, March 23rd, 1920, at 9:30 o'clock A. M.

46452

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 46453

Before: ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 23, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 46454
MR. O'BRIEN, of Counsel for Defendant Swann.

The Master: Was there anything else you wanted to say, Mr. Ransom, about this coal requirement?

Mr. Ransom: Yes. When we suspended yesterday I had not finished my summary of the things which the record shows on the subject of the generator coal requirements.

When Mr. Woods was under cross-examination 46455
Mr. O'Brien interrogated him as to the quantity of generator fuel used at each of the stations of the Consolidated, and also of the Mutual, the Standard, the New Amsterdam and the Astoria, for 1918, and for 1920, and brought out certain figures in that respect which were embodied in Complainant's Exhibits 360 and 361.

That shows, for example, for the Mutual, 1918,

46456 Mr. Hayward: Can we have a copy of this, I wonder?

Mr. Ransom: They are in the record, I think. (Continuing): 32.38; Standard 32.58; New Amsterdam, 33.20; Astoria, 35.23. For 1919, the Mutual, 33.25; Standard, 32.87; New Amsterdam, 33.12; and Astoria, 36.43.

Mr. Little in his tabulation based on the use of oven coke, which he said gave a little better results than anthracite coal, gave 32 pounds as the required quantity of oven coke.

Mr. O'Brien: He put that at the maximum, Judge.

46457 You might as well be definite and precise on these matters.

Mr. Ransom: I am. That is the allowance that he made. Mr. Little says, "I allow 32 of oven coke," which he said was a little better than anthracite.

Mr. Miller, at page 7681 of the record, when interrogated regarding operating results as to generator fuel, which showed 32.83 in one year and 32.74 in another, said that those figures from his knowledge of plant operations in various parts of the country showed that Consolidated and Astoria plants, using that quantity of generator coal, were operated efficiently and kept up in a highly efficient operating condition.

46458 Mr. Woods testified, page 4847 of the record, that his testimony related not to a single plant of the Consolidated System, or even to all plants of the Consolidated System, but it represented what could, under a fair average of conditions as they were at the time that he testified, be obtained from the coal which had for a number of years been received. Mr. Woods said that four or five years ago the figure probably would have been 31.50 instead of the figure which he gave.

At page 4923 of the record is shown his comparison of the results of coal and coke, and at pages 4870

and 4872 your Honor will find his comparison of "coal that we are getting now," as he called it, with the coal that he had received in other years. 46459

So, upon the whole situation I think your Honor would be bound to conclude that the figure of 32.50, which Mr. Woods gave, is conservative and low rather than high; and that is in no way contradicted by the 99th Street figures or by the 21st Street figures when you take into account both the coal and the coke, as was not done yesterday in the original statement of the Master.

Mr. Chambers: Why, the witness Woods admitted himself that it was as low as 31.50 on cross-examination. 46460

Mr. Ransom: He said it might be. That is what it would have been four or five years ago, but not now.

Mr. Chambers: He said if the coal was good 31.50 would be the figure.

Mr. O'Brien: And he said the coal was good now.

Mr. Chambers: He said it was getting all right now, as I remember it.

Mr. Ransom: Those statements are as reckless as those that were made yesterday.

The Master: Do not let us get into that cross fire discussion; we will get nowhere.

Mr. Chambers: I will give you the folio, if you want it. 46461

Mr. O'Brien: It only proved the futility of this method of trying to have a symposium, Mr. Ransom coming in and paraphrasing the testimony.

The Master: Stop it, Mr. O'Brien.

Mr. O'Brien: I am going to have my say here.

The Master: Yes, you will have it when I give it to you. Stop it. Mr. Hayward, is there anything else you want to say?

Mr. Hayward: Why, it seems to me—yes, their own figures show that there is something wrong in the state

46462 of Astoria which we have not been able to smoke out in this case, if those old plants, using old machinery, can make this water gas between 30 and 31, or 31 1/2 at the outside. Judge Ransom's statement of their own figures shows that Astoria runs up to 36. We better scrap that plant. Why should a big modern plant take 36 when the others take 31?

I insist that the fair way to determine this is to take the average of the years when there was what Mr. Woods calls good coal. We have all the coal in the world in the United States, we are not going along on any such unusual way as we have the last two years.

46463 The Master: Will you let me interrupt you now?

Mr. Hayward: I think we are coming back to normal, and I think you do, too.

The Master: This is what is in my mind: Exhibit 364, the Teele exhibit, states the result of operation for twelve months to December 31st, 1918, generator coal used, which I take it—well, it does refer to water gas—32.01, and generator coke .82. Now, the point I am trying to get clear in my mind is whether in the light of all the testimony in this case I am justified in taking that figure as it appears upon the books as being probably a correct figure. That is what I am trying to get at.

46464 I will handle Astoria when I get to it later on, but the point I am trying to get clear in my mind is whether, in the light of the evidence other than the books, I am justified in assuming that the book result of 32.01 of coal and .82 of coke during 1918 was a fair result or is probably a correct statement. That is the point I am trying to get at.

Mr. Ransom: The lowest figure in the Consolidated System and—

The Master: Well, if any other counsel want to say anything about this one item I will hear it; otherwise

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I will pass along to another point that I have in mind. In the same manner I would like to get—

Mr. Hayward: Well, I don't agree that you are entitled to take that at all; I do not think there has been any proof that would satisfy anybody in the world that wanted to look at this case fairly.

Mr. Chambers: I would like to say something more.

Mr. Hayward (continuing): That it takes any such amount. We are entitled to the best that science and effort can produce, and we are not entitled and we are not required to take the high figures of 1906 and 1907, when the other gas rate was pending, and not 1918 and 1919 figures, when this gas case was pending. 46466 We have a right to take the average of the years between, which would bring it down around 30.

Mr. Chambers: Right.

The Master: I do not intend to spend as much time on the other items as on this, but I want to talk it out with you, Colonel.

Mr. Hayward: We can talk about that all day, if you want to.

The Master: But I do not want to.

Mr. Hayward: You will have to, if you take this case up in this way.

The Master: We will see. Take your point you 46467 have just made, taking the average and assuming we depend on the books

Mr. Hayward: I take here 99th Street station.

The Master: That is just what I have in my hand. In 1906 it was. There is the figure for 1906 and in 1907 32.12.

Mr. Hayward: With a little coke.

The Master: In 1908 it ran 25, nearly 26, and over six pounds of coke.

Mr. Hayward: Yes.

46468 The Master: When you average that for the three years—

Mr. Hayward: Just a minute. When you get past the old gas case, see how it drops until you get to the next gas case.

Mr. Ransom: Look at it.

Mr. Hayward: Well, look at it.

Mr. Ransom: The next one is 30 and the next 36.

The Master: The other gas case ended in 1909?

Mr. Ransom: In March, 1909.

Mr. Hayward: 1908.

46469 The Master: 1908?

Mr. Hayward: Well, they had the bulk of 1909 after the case was finished.

Mr. Ransom: In 1910 it was 31 point something.

Mr. Hayward: It is lower every year.

Mr. Ransom: And 38.

Mr. Hayward: It dropped from 32 1 2 down to 31 as soon as the other case is out of the way, and stays down until a new case is started.

Mr. Ransom: That is a contemptible insinuation.

Mr. Hayward: It is what?

Mr. Ransom: That is a contemptible insinuation.

Mr. Hayward: Well, I don't know how contemptible it is, but it is proper argument in this case.

46470 The Master: Yes, it is certainly proper argument.

Mr. Ransom: It is not argument at all.

The Master: I should certainly present it as argument in this case if I were counsel.

Mr. Hayward: If we were not bulldozed by Mr. Ransom, which I never will be—never, never, never.

The Master: I agree with Colonel Hayward on that.

Mr. Ransom: There is not the slightest proof to sustain it.

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The Master: It may help you and your clients to have some kind of evidence to support it.

Mr. Ransom: But it does not show such a drop.

The Master: Yes, it is fairly susceptible of that kind of argument. Take one year, there were 17 pounds of coal and a certain amount of coke, and 17 pounds of coal and 14 pounds of coke. Assuming coke to be figured at less in weight per pound than coal, you would have less, I think, than in other years—considerably.

Mr. Ransom: Mr. Woods said that five years ago the figure would have been 31.50, and 1915 was five years ago; and the figure was 31.50.

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The Master: Do not let us have any more argument. When Colonel Hayward makes a remark of that kind and draws an inference because of low cost of operation in the years prior to the first and second cases, it is fair argument in a law suit, that is all there is about it.

Mr. Ransom: I would like to get the opinions on that.

Mr. Chambers: Did you say I had an opportunity to say something more?

The Master: Yes, if you want to.

Mr. Chambers: I want to say this—that Mr. Woods testified that he took a ten million cubic foot plant and that the amount of coal used always depends upon the kind of generator. He also said that the amount of coal used would vary from time to time, and it might go down as low as 31. Then I asked him this question, which the Master would not permit him to answer:

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"Q. Why didn't you figure out what it actually costs up at one of these plants, say at the 21st Street plant, and how many pounds used per thousand, averaging for a year; why didn't you do that?"

Now, that the Master would not permit him to

46474 answer, and you said at the time if you allowed him to answer that, or he did that, we would get back into these books. My point is this—that you cannot any more sit down and say that it takes so many pounds of coal to make a thousand feet of gas than you can say you can operate a Hudson car or a Franklin car and get on a gallon of gasoline so many miles. There is no set rule for it and, as far as Teele's Exhibit 36 is concerned, we have moved to strike that out.

It seems to me that is no evidence at all of what the generator coal—how many pounds was used per thousand cubic feet of gas, because the underlying data was
46475 not brought in and none of the superintendents of the plants were there, and it is of no consequence at all on this question.

So you see the whole thing is surrounded with a good deal of doubt as to how many pounds of coal it does take to make a thousand cubic feet of gas.

The Master: All right. Is there any dispute now as to the amount of coal that it takes in coal gas to get a thousand cubic feet? Mr. Woods' testimony is 200 pounds. The impression I have is that the witnesses generally agreed that that item was right.

Mr. Chambers: Which item is that?

The Master: In coal gas. That you will get a
46476 thousand feet of gas out of 200 pounds of coal.

Mr. Hayward: Well, if the Master please, we have only here, as I understand it, this morning, the 14th Street and one of the other plants, I forget which it is.

Mr. Clark: 42nd Street.

Mr. Hayward: 42nd Street. We have not the Astoria, but they are in the report of the company which we have sent for, if that could be deferred until that gets up here.

Mr. Ransom: They are in the Sangster exhibit, which also is here.

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The Master: Well, perhaps some of the other counsel have something on that. My recollection is that there was general accord on that. I may be wrong.

Mr. Ransom: Mr. Little said it was too low.

Mr. Chambers: By who on our side?

Mr. Ransom: Mr. Little said 207.

The Master: What is your point about it, what is your contention, that that is wrong or right?

Mr. Chambers: I contend there is no competent proof at all as to how much coal is necessary to make a thousand cubic feet of gas—of coal gas. No competent proof.

The Master: I see. If you are not prepared to— 46478

Mr. Hayward: Well, at the moment all I can say on this poor old obsolete 14th Street station is that they beat that record year after year. Here is 1911, 198; here is 1914, 197, and so on.

The Master: What exhibit are you referring to?

Mr. Hayward: That is Exhibit—

Mr. Clark: 126-A, of ours.

Mr. Hayward: Schedule 126-A; we will get the number of the exhibit. 42nd Street, which is obviously not a fair test because of its antiquity and obolescence, they show 189, 175, etc. Unless I read these exhibits wrong. Maybe I am not able to read the English language. You told me they had changed 46479
all the law while I was in France; I didn't know that they had changed arithmetic and the English language much.

The Master: What have you to say about that, Judge Ransom?

Mr. Ransom: That is the best demonstration that perhaps has yet taken place in the case of the fact that the 14th Street and 42nd Street plants are just as Mr. Woods has claimed, highly efficient plants with respect to a gas produced from given quantities of coal.

The Master: Colonel Hayward is right, that the

46480 records show at 14th Street and 42nd Street it did not take 200 pounds.

Mr. Ransom: That is oil gas at 42nd Street. They testified they made large quantities of oil gas for enriching purposes, in oil gas benches which have been referred to here.

The Master: How about 14th Street?

Mr. Hayward: 14th Street?

Mr. Ransom: 14th Street has been operated at times with the oil gas brought from 21st Street. I do not know the way the particular figures you refer to are made up, but taking Astoria, either of the plants, tak-
46481 ing either the Central Union and the other testimony in the case, it seems that 200 is a low figure. In fact as I recall Mr. Little's testimony, Mr. Little said that 200 was too low, it was better than anybody else that he knew of was doing in the country, and that he would not put down in his table as low a figure as 200, and he put 207, I think.

The Master: Now, I want to get to the price of coal.

Mr. Hayward: Now, let me ask a question right here before we go any farther on this thing. You asked me a lot of questions now and I have tried to answer them to the very best of my ability, setting
46482 forth whatever I could find in this record that helped my side of the case. I would not care a hang for anybody who did not know which side of the case he was on, and you would not either.

The Master: Not a bit.

Mr. Hayward: Now, I would like to ask you in this case, are we required to disprove the allegation of complainant's petition, or are they required under the rules of law to prove the allegations of that petition beyond a reasonable doubt?

The Master: The burden of proof is on the complainant.

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Mr. Hayward: Well, I did not ask you about the burden of proof. Are you going to make them prove the case on the preponderance of evidence, or beyond all rational doubt, in this case as in a rate case?

The Master: I am going to hold them to the rule established by the courts, the cases.

Mr. Hayward: You do not think there is any doubt as to what that rule is, do you?

The Master: And I am going to hold them to a rule which will require them to prove to my complete satisfaction, so that I have not any doubt about it, as to any item that I allow.

Mr. Hayward: And if there remains any doubt in 46484
the Master's mind you do not consider the burden of proof is on us to satisfy you that their figures are erroneous, do you?

The Master: Not at all.

Mr. Hayward: From the way we were going at it, it looked like the burden or proof had absolutely shifted in this case.

The Master: Not a bit; not at all.

Mr. Hayward: I think myself involuntarily the Master got himself in the mind that it shifted the day the complaint was filed.

The Master: Never.

Mr. Hayward: Judge Ransom says that they are 46485
losing $12,000 a day and we have to disprove it.

The Master: Mr. O'Brien, I have not asked you to say anything.

Mr. O'Brien: There is no reason why you should frown when I rise to say something.

The Master: You will take your seat.

Mr. O'Brien: There is no reason why the Master should get excited when I have something to say.

The Master: You will obey my orders here. Colonel Hayward, I was about to say to you in explanation of the comment you have just made, I never have in-

46486 tended to convey such an impression. What I did say over and over again was—and it was always with reference to applications of adjournment and matters of that kind—that I had to assume their claim that they were losing $10,000 or $20,000 a day was right. In order to pass upon questions of adjournment I had a right to assume that a sworn statement that they were losing a lot of money was right, to the end that I should expedite this trial, and that is all I ever intended.

Mr. O'Brien: Well, I want to remind your Honor, if I may be permitted now to say a word, of some of the many expressions you made during this case
46487 showing that you had pretty much arrived at a conclusion as to items of proof in the case, and one of the expressions I had in mind when you undertook this symposium yesterday afternoon was a statement made by you—if I do not give it you in express terms I give it to you substantially—that if it came to the point where you had the statement of the gas engineer of the company, in the company's employ for a number of years running these plants, on one side and the statement of an expert on the other as to the methods of making gas and the materials and so forth, in the absence of proof that the engineer of the company was dishonest you were not going to
46488 take the expert from the outside.

The Master: Well, I will repeat what I said before.

Mr. O'Brien: Now, that means, translated so far as my mind goes, that as to that matter you have thrown the burden of proof upon the defendants.

The Master: Well, I won't argue it with you. I want to know this: The complainant claims that between the years 1913 and 1918 there has been a large increase in the cost of various material, including coal. Exhibit 283, I think it is, attempts to set forth the range of prices of anthracite coal and

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bituminous and other material from 1913, lowest and highest, to lowest and highest in 1918.

Another exhibit, or perhaps—yes, it is another exhibit, 288, gives that in percentages, showing that the increase in 1918 over 1913, for instance, of coal, was 86 plus per cent, and of one item as high as 200 per cent, and another one of 196 per cent.

I, of course, have in mind the contention of counsel as to competent or adequate or proper proof of various items, but what I want to know is whether —and to interrupt myself, I do not recall that the defendants have undertaken in any way to challenge these figures, except that my recollection is Mr. Cham- 46490
bers brought out that some items have been bought more cheaply in the last six or seven months. But I would like to know the views of the defendants as to this general range and the increase in the cost of material other than oil, for the time being.

Mr. Hayward: I think that is the same thing that we had a discussion about before. You said that table proved the average, and I said it did not have anything to do with proving the average; and you said finally I was right, the highest and lowest cannot possibly prove the average price.

The Master: No, but is there any proof as to the highest and lowest for those three years, and as 46491
to what the cost of coal was, and other material was, in 1918?

Mr. Ransom: Well, there is another exhibit which shows the prices actually paid year by year.

The Master: Yes, I remember that, but what I want to get—

Mr. Hayward: Of course, it is our contention, your Honor, that that exhibit showing the highest and the lowest might be a freak thing and does not throw any light on the average prices at all.

The Master: Well, so far as your particular cli-

46492 ent is concerned you did not attempt to offer any proof as to the cost of material; am I right about that?

Mr. Clark: Of this material and labor, yes.

The Master: What?

Mr. Clark: We showed costs for each year.

The Master: Except as the books show.

Mr. Clark: Yes.

The Master: You simply offered a tabulation of the books.

Mr. Clark: That is all.

The Master: I mean no independent proof by any
46493 witness. I was going to get to your exhibits as to the result of operations in a few minutes. I want to get this oral testimony out. You did not offer any either, did you, Mr. Chambers?

Mr. Chambers: Yes, I would like to say a word now in full on this Exhibit 283, if I may.

The Master: Exhibit 283? All right. Go ahead.

Mr. Chambers: To which you just called attention the prices.

The Master: Go on.

Mr. Chambers: In the first place, you will recall when Mr. Woods was on the stand you excluded absolutely from the hypothetical schedule of what it
46494 cost to make a thousand cubic feet of gas, based on the hypothetical plant of ten million cubic feet, all prices—you excluded all prices absolutely.

The Master: Well, I am talking about Gawtry's testimony now.

Mr. Chambers: Now I am getting to Gawtry's. If I remember right Gawtry's was Exhibit 283.

The Master: Yes.

Mr. Chambers: Now, just let me call your attention to a few things about that. In the first place, counsel for complainant limited Gawtry's exhibit, and 283 is one of them, and I quote, "To economy

of the purchase." And the Court said at folio 10710 that there must be independent proof, in addition to Exhibits 283 and 285, of prices. 46495

So that up to the present moment—and I would have said this had I been permitted to have time to sum up—up to the present moment there is no testimony in this case upon which you can base a finding as to the price of coal at any time.

The Master: There were contracts offered in evidence. But there were contracts offered in evidence showing what they actually paid for coal afterwards, Mr. Chambers.

Mr. Ransom: And vouchers.

Mr. Chambers: What contracts, now, may I ask? 46496

The Master: Of the various coal companies.

Mr. Chambers: Was there?

The Master: That is my recollection of it.

Mr. Chambers: I would like to have counsel tell one.

Mr. Ransom: Vouchers.

Mr. Chambers: That is just the point. I claim here and now that the record shows that throughout this case counsel had not—and I told you that he would claim when you allowed 283 in evidence, I warned you that when this case was closed counsel would claim that these were valid prices and you would take it and I relied on it. 46497

The Master. Well, the contracts were in court.

Mr. Ransom: The contracts were here and were inspected.

Mr. Chambers: Let him find them and then I will have something to say about those.

Mr. Ransom: You know where they are.

Mr. Chambers: We are only dealing now with 283 and 285.

Mr. Ransom: Exhibit 284 shows quantities of anthracite coal, Exhibit 285 shows quantities of bitu-

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minous coal. Exhibit 286 shows the prices paid in 1918 for anthracite. Exhibit 287 shows the prices actually paid for bituminous in 1918.

Mr. Chambers: I am saying that the Master said he would not take those without other proof.

Mr. Ransom: For the purposes of this case—

Mr. Chambers: You did not call anybody who knew, actually knew the prices of coal, etc.

Mr. Ransom: Well, here are exhibits, Defendants' Exhibits for identification: Z, contract with the Pittsburgh Coal Company, Exhibit AA, Berwind-White Coal Company; Exhibit BB, Westmoreland Coal
46499 Company; Exhibit CC, Consolidated Coal Company; Exhibit DD, Jamieson Coal Company; EE, Pennsylvania Coal Company.

The Master: That is my recollection.

Mr. Ransom: Exhibit FF, Pittsburgh Terminal; Exhibit GG, Hite & Rafetto, and then the correspondence with the coal companies.

Mr. Chambers: I want to call your attention to one more thing, and that is this: you remember yesterday that I moved to strike out these various exhibits, and you said at folio 10711 that you took these exhibits as tabulations of vouchers which are not in evidence. So that, really, these exhibits are not worth a continental. I might use a stronger term, but the Court
46500 procedure does not permit it. So that we closed the case here without any valid testimony, I say, any competent testimony, as to the price of coal.

The Master: How about labor cost, has that gone up, or is there proof of that?

Mr. Ransom: Well, may I say a word on the price of coal?

The Master: Yes.

Mr. Ransom: Mr. Woods' computation with respect to "generator coal (anthracite)" was made on the basis of $8.26 per gross ton. The price shown,

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for example, in Exhibit 486 for the Astoria, eight months ended August 31st, 1919, generator coal, was only $6.713 a ton.

Under the proofs in the case the 1919-1920 coal was at a price in excess of $8.26, and Mr. Little when he was on the stand was shown vouchers which he said confirmed him and led him to—confirmed his knowledge of the price of anthracite coal, those vouchers being $8.55 and $8.67 a ton as the price at the time that Mr. Little was testifying, in January and February—February.

So that, while the proof in the case as of October would be on the basis of $8.26 per ton, there is evi- 46502
dence in the case, both in general as to the increase in the price of anthracite coal and specifically the testimony of the witness with respect to the price of anthracite coal at the time he was testifying, showing that it was costing $8.55 to $8.67, and at the additional cost of coal from $8.26 to $8.67 would be 6-10th of a cent per thousand cubic feet, and the increase over the prices to that figure, or even to $8.26, over the prices shown in the 1918 statement, for example, would be several cents.

The Master: Now I would like to get the views of counsel about the oil situation. The complainant has offered proof as to what it has actually paid for oil 46503
during the years including 1918 and prior to 1919. Other testimony has been offered by the defendants as to prices paid by other companies and as to oil situations and so on. I would like to get the views of counsel about that—what their contention is.

Mr. Ransom: If you desire to hear complainant's counsel, I am ready.

The Master: I know your claims. Your claim is you paid what you show you paid.

Mr. Ransom: I claim that the cost is substantially more than the proof in this case.

46504 Mr. Hayward: Well, of course, what I would claim if I had an opportunity to claim anything in an orderly way, as all of us have done since earliest childhood in law suits, which privileges seems to be denied to us here—as I said yesterday, taking up an informal village debating society, and with much less dignity and orderliness, that such a thing would be what I would like to claim, and what I would like to be heard on is the proposition that the only fair estimate on either coal prices or oil prices is to take an average over a period of years.

I would like to say along that line that for any
46505 man to say that coal and oil are going to stay at or anywhere near their present extraordinary prices is perfectly ridiculous.

We know and can give a very good reason, and every economist in the United States has said the same thing, and all over the world—the reason for the present, the last two or three years of high prices of coal. One isolated case, one of the greatest coal deposits in the world, the Saar Basin, for the period of the war was cut off entirely from the world. Anybody who says that England, France, Italy and all the European countries can continue to buy all their coal in the United States and pay present prices for
46506 it and not go bankrupt is an idiot, that is all he is.

The present price of coal is the result of an extraordinary condition that is being remedied as rapidly as civilization can get back to work—which every man knows. The idea that the present coal that this Gas Company and Mr. Woods may have gotten during a certain crucial period of the country's history, if it was not as good then, that it will always be bad coal, from now on, is absurd. We have all the anthracite coal in the world.

It seems to me it is unfair to the defendants in this case to take either the extreme low or the extreme

high. That is juggling with statistics. We know what we can do in juggling with statistics. It does not have a thing to do, if the Master please, with the average. You have to prove how long the low price lasted and how long the extreme high price lasted, and compare that with the total period, taking the figures in between; isn't that so? 46507

The Master: When you are talking averages, yes.

Mr. Hayward: All right, then.

The Master: I do not think it is so much a question of averages, though.

Mr. Hayward: There is the reason why this coal is almost prohibitive at the present day. If we assume it is going to stay anywhere near that, we must presume that manufacturing and everything else in this country and all over the world is doomed. 46508

The Master: How about oil, fuel oil?

Mr. Hayward: On oil I take the same view exactly.

The Master: What is it based on?

Mr. Hayward: I want to say that the United States Government is betting that oil and coal will both go down; they are building both coal and oil battleships. This company is betting four and a half million dollars that oil will go down, isn't it? It is making an investment at Astoria of four and a half million dollars, which on their own theory which they have advanced in this case as to the price of oil at the present time and in the future, and if their prophecy was carried out that four and a half million dollars would only purchase and it would cost four and a half for that gas apparatus. 46509

We know that every part of the United States and every part of the world is increasing by leaps and bounds the production of oil. Now, Judge Ransom with all his Lincolnesque cleverness cannot upset the law of supply and demand. We know why oil is high

46510 at the present time and why it has been high during the years of the war. We know this because thousands and thousands of sources of oil were shut off from the people of the world. We know that oil is increasing, the supply of oil is increasing; we know that things are coming back to a normal condition. I believe any thinking man knows that. These gentlemen knew it when they made an investment of four and a half million dollars necessarily predicated on the proposition that oil was coming down.

You cannot take any extreme price or extreme condition during the time this country was at war, or the
46511 other countries were at war, before we went in even. In some cases they affected us almost as greatly as our own participation. You cannot take any of those freak figures; we have got to take—on this theory, if the Master please, in my opinion sooner or later we are coming back to somewhere near normal, and now to say that the average lawyer in New York is going to make thirty-five to fifty thousand dollars a year out of his law practice, that the average doctor is going to make $50,000 a year, that the average college professor is going to be paid an average salary of $25,000 —I do not believe it, and if the present prices of labor and other things keep up, for a man to lay bricks, if
46512 he is going to get $10 a day, you and I who have spent fifteen years to twenty years, forty years of our lives, perhaps, to get ready to practice our profession, we are going to make $100,000 a year in perfect proportion.

The Master: Of course we won't.

Mr. Hayward: Of course we won't, and your children and our children will not become bricklayers; they will become lawyers or doctors or something of that kind.

The Master: Not if I can help it.

Mr. Hayward: Because we are not going up to

those absurd figures. Labor is going down, it has got to, and to say that you can predicate this rate case, which is to determine the price of gas for the people of the city for the next ten years, on these freak figures they have brought in of the war period, is unfair and absurd. 46513

The Master: In my inquiry as to oil—

Mr. Hayward: Just let me finish. I think the fair thing to do in this case and the thing you could not be criticised for doing, the thing that will be carried out in the future, in my opinion, is to take any period of years, ten years, normal years, and figure out what your prices of coal and oil were during those years, because that is what we are going to pay for coal, oil and labor in the future. 46514

The Master: What I had in mind particularly was this; and you argued another angle or point of view, actual expenditure in 1918. There was some intimation by at least one counsel in the case that the amount paid in 1918 was not honestly paid, that is was not the market price or the price at which it could be bought.

I had in mind the argument as to guessing at the future, because that is all it can possibly be; but I wanted to bring out at this time the contention by counsel as to what the proof showed, what the record shows, as to what the claim is that I am justified in finding upon the proof as to the price paid by the gas company in 1918 for gas oil—whether that was honestly paid or whether there was, because of some relation between the Consolidated Gas and the Standard Oil, a price in excess of what it might have been bought for elsewhere. That is what I want to know. I will hear counsel on that. If there is not anything further to say on it, I will proceed to another point. 46515

Mr. Chambers: I want to say something.

Mr. Ransom: I want to say something.

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Mr. Chambers: Just a minute until I get all my data here together.

The Master: Have you got your data arranged, Mr. Chambers, having in view that you were going to present your various points in order in a summing up?

Mr. Chambers: I did not have that ready at all yet. I did not have time: I wanted about two weeks, at least two weeks more, and then I would have been ready. I was not ready at all. I have a few notes here, and I have something on this to say as soon as I find them. I could not do justice to the case in two
46517 weeks. I told you so—and I worked faithfully upon it while you were away, taking into consideration that I was somewhat tired after having been in the case quite a while, and if I had had two more weeks I think I would have been ready to sum up. But you understand that I had no idea you were going to raise these particular questions at this time. If you will give me a second here I will say what I have to say here to that.

Mr. O'Brien: While Mr. Chambers is waiting, I want to say to your Honor on that point, so far as I am concerned—and I call to your Honor's attention certain proofs I put in, certain testimony, and on that
46518 you expressed a conviction that I claim meant that the burden of proof was on the defendants. That was the statement—

The Master: I do not care what you thought, or assumed or guessed. I told you a dozen times the burden of proof is on the complainant in this case.

Mr. O'Brien: Well, I am going to give you this specific proof of what you say and my interpretation of your remarks.

The Master: I do not care what your interpretation is.

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Mr. O'Brien: When we offered testimony as to the nomination, at least the interest, of William Rockefeller and members of his family in the Standard Oil of New Jersey, you made the statement that you would not care if the same people owned both companies, it would be still up to me to tell you where they could get gas oil cheaper.

The Master: That is correct; that is right.

Mr. O'Brien: There is a lot of proof in this case. In the first place, it would be up to them to prove properly, and they never have done it, that they made an earnest, prudent and diligent effort to get the lowest price. They have always bought from the same 46520
company, it is the Rockefeller company, and he is on the committee of this company. They bought at a price much greater than most other companies are paying. That is in the proof in this case. When added to that there is evidence of the community of ownership, the interests of one party in the other company, then the burden is still greater on the complainant to come forward and explain why for year after year they have been buying oil from the Standard Oil of New Jersey and why they paid the prices that they did.

So that your Honor, I believe, was in serious error if he held or still holds the view that we would still 46521
have to show under the proofs in this case and all the bearings of the proofs in this case that gas oil could be bought cheaper somewhere else. They are practically doing business with themselves when they bought oil through the executive committee of this company from the Standard Oil of New Jersey.

Further than that, the fact alluded to by Colonel Hayward just now in reference to the unit which they say they are going to put in at Astoria only calls upon them for further explanation, where in the face of a rising price in the oil market or a twist in the oil market

46522 they conclude to put in upwards of four and a half or five millions of dollars in a water gas plant at Astoria, that adds further need of explanation in this case.

But under all circumstances, where the proofs indicate the domination of the gas oil market in and around New York by the Standard Oil of New Jersey, and where you have proofs before you as to the ownership of Standard Oil stock by John W. Sterling, by Samuel Sloane and other men who are connected with the Consolidated Gas Company, then there is a great burden on them, and we do not have to
46523 come forward with any proof and it was not necessary for the defendants to come forward with the proof as to oil contracts made by other companies.

In regard to that I am not going to refer categorically to the prices that were set forth in the various oil companies or gas companies, the prices paid to oil companies under current contracts, but it is a fact that during 1918 the price was 5 1/2. The price was 5 and, maybe, three quarters; but there should not be any price allowed for gas oil during the year 1919 more than 5 1/2 cents. The little independent company at Coney Island, the Brooklyn Borough, is enjoying a contract that will run along until after the 1st of July
46524 of this year at five and a fraction, and the Bronx Gas & Electric made a contract at 5 and, I think it was, three quarters cents.

Mr. Ransom: Eight.

Mr. O'Brien: What is that?

Mr. Ransom: The present contract is 8 and 7 3/4, and the record shows it.

Mr. O'Brien: Well, I may be in error on that, but the contract they made in 1918, the price that should be taken for the year 1918, should not be more than 5 1/2 to 5 3/4 cents. In fact I believe that you should take into consideration the price that was paid by the

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larger corporations, like the Public Service of New Jersey, the U. G. I. of Philadelphia and the Boston Consolidated—of course making such allowances for transportation charges as should be made or might properly be made in the case of either company on account of their distance from the particular station where the oil is stored and distributed.

But that is the situation summed up on the oil they have not met the burden of proof, they have not come forward and explained this close relationship between the Consolidated Gas and the Standard Oil Company. It has a serious bearing upon this case: I believe that when you got that relationship established the complainant has got a great deal of explanation to make. 46526
They have got to show then the abandonment of the coal gas system, they have got to show the predominance, that is, at least why they used the water gas system to the extent that they did at Astoria when they built that new plant.

There are a great many things that would have to be explained in a case of this kind, in the face of the testimony adduced. So that, summed up, without going into the 3 cent contracts made by the Gulf Refining Company, the contracts for 3 cents and the subsequent contracts for 5 cents that cover now the current deliveries to the U. G. I. and the Public Service Corporation of New Jersey and the Consolidated Gas of 46527
Boston—with those there should not be beyond 5 1/2 cents taken for oil during 1919, and in fact the fair average price for that year should be not more than 5 cents.

If the principle is adopted of trying to average a price for a period of ten years, then you will find that the average would be between 3 and 5, having in mind the 3 cent price, the three big companies that I have mentioned, and 3.03 price of the Brooklyn Union Gas made back some three years ago. Now, there is a

46528 situation summed up in practically a nutshell as to the oil situation.

The Master: Now, Mr. Chambers, have you anything?

Mr. Chambers: Now I am ready to say a few things.

The Master: Go ahead.

Mr. Chambers: I am glad to have some of these gas companies hear what I have to say, and certainly the Master cannot complain if what I say is based largely on what you have said in this case.

The Master: Of course I cannot.

46529 Mr. Chambers: I contended throughout that we are in abnormal times. The Master said during the course of this trial "When I come to fixing what I think is the average, usual, proper cost of producing and delivering gas, I shall not be affected very much by this temporary condition that existed during the war, I will not be affected very much by the temporary, if it were temporary, increase in the price of material, either. I am going to try to get a broad picture of the situation." There are some asterisks in here.

The Master: Yes.

Mr. Chambers: The history of gas from time to time running back a number of years.

46530 The Master: I don't hear you quote me, and I recall particularly I said, "But if I find that the present high level is the present normal level, I shall be very much influenced by it." I don't hear that.

Mr. Chambers: Well, I did not find that.

The Master: I will find it for you; I repeated that several times. The whole question here is whether we have reached a high normal level.

Mr. O'Brien: I remember that. That is when the late Mr. Gawtry was with us on the stand.

Mr. Chambers: This was early in the case, when we were going through the heated term, and when I

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thought the Master oftentimes expressed the true views about the situation. And on this particular occasion I think you did just about express the correct views.

The Master: Well, I think so, too. I am agreeing with you.

Mr. Chambers: I am not going to rest on that one quotation. Just bear with me and I will quote you some more.

The Master: I have got to have the picture of this situation, I have got to look back over the years to see what happened, I have got to have in mind what the trend has been and what it will be, I have got to reach a conclusion having in mind a broad picture, as 46532
I said then, as to whether we have reached a high normal level whether it is going to continue for a period of years, which might ruin this company, if their claim is not allowed as they make it, assuming the proof to justify it.

Mr. Chambers: It cannot be ruined when they have a surplus running up into the millions. Maybe it is twenty-five millions, I don't know. Now, you have said further "I tell you, Mr. O'Brien, I do not care much about that, I am looking into the future very largely. These peculiar war conditions cannot in any sense make this case." Again you said, "My present judgment, is unless I change my mind, that in view of 46533
the peculiarly difficult situation arising in 1918, I shall disregard that year entirely in my calculation. That is my present view about it." Now, what you said upon that occasion coincides with my own views of the situation.

The Master: But that was before I had 1919 in, or any part of it.

Mr. Chambers: I beg your pardon, no. Not as I recall. It is too far along in the case.

Mr. Ransom: I would prefer 1919 and 1920 costs to 1918.

46534 Mr. Chambers: Then you made this startling statement when you refused to permit a witness to answer a question—you said, "I will take judical notice of it, that everybody is profiteering or trying to."

The Master: Yes. I do it yet.

Mr. Hayward: Sure.

The Master: Especially when I am looking for an apartment.

Mr. Chambers: That is not all. I always believe when summing up in using the Court's own version.

Mr. Ransom: When you have not any witnesses.

Mr. Chambers: I am coming to the real point in a

46535 minute; I am laying the foundation.

The Master: It does not help us any to repeat what I said before, and I will repeat it again. There is not anything I have said in this case that I am not prepared to repeat. What I want to know is what you claim you have shown here as against the proof offered by the complainant. You have offered a lot of contracts; what inference do you want me to draw from them?

Mr. Chambers: I do not want you to draw any inference from these abnormal prices, I am laying the foundation for it, and I think I will show that you agree with us—at least at one time in the case—that

46536 you would have to disregard the present prices entirely. You said at folio 5458, "I do not believe that Judge Ransom expects me to assume that the charges made here and prices paid for coal are reasonable until he proves it."

The Master: That is right. I think the defendants then proved it, if the complainant did not.

Mr. Chambers: You think we did?

The Master: Yes.

Mr. Chambers: That remains to be seen.

The Master: I am talking about oil now. There

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were a number of things the defendants proved that the complainant failed to prove.

Mr. Hayward: Is Mr. Chambers through?

The Master: No.

Mr. Chambers: If your Honor opens that up, we take the position that at the close of complainant's case it had failed to prove a cause of action, and then in order to rebut or overcome or counteract the effect of a lot of incompetent testimony, we were obliged to offer for what it was worth some testimony on our part; but by doing that, because we were driven into the corner by your erroneous rulings as we thought, I don't believe any court will hold that we thereby 46538
cured any defects in complainant's proofs.

Now coming back to this question of oil, Mr. Addicks testified that the Consolidated Gas Company purchased oil for all these constituent companies in so large a quantity that it was almost impossible for them to buy oil from any company but one, and later it appeared that some of the directors of this favored corporation were directors of the Consolidated Gas Company, if I remember correctly, and you said, you made this statement, and I can give you the quotation but I will do it in substance—you said, while that question was up, this interlocking of directors between this Gas Company and the oil company, that having 46539
appeared, or when that appeared, you would scrutinize very carefully the contracts for oil between these two companies.

As I recall, that did appear; there is some evidence that some of the directors are common to both corporations. And taking into consideration that fact, and taking into consideration the abnormal conditions which now exist, I say that this situation should not be destroyed because of the present outlook and the present prices of commodities are high, that we may be just ahead of the bear, that prices may fall suddenly,

46540 as was my experience. I had a case which I pointed out to you, when I was trying the case in Albany, and the witness went on the stand and swore that the oil outlook was not the best and that prices were high and they were alarmed over it, and so on. These are not their exact words, but hardly before these witnesses left the witness stand the oil market broke and there was a surplus. I am speaking now of May and June, 1901—the prices broke and there was a surplus instead of a deficiency, and they made a very favorable contract, so favorable that they were ashamed to continue the price of $1.30 a thousand cubic feet, and it dropped

46541 to $1.15 and it is $1.15 now.

The Master: Suppose we just stick to the record in this case, Mr. Chambers.

Mr. Chambers: Now, we have offered here a table showing what prices were paid for oil in days when conditions were not abnormal.

The Master: Where is that table?

Mr. Chambers: It is table 300.

The Master: I would like to have it.

Mr. Ransom: The incomplete version of it. It does not relate to modern years.

Mr. Chambers: I did not interrupt you; just let me finish.

46542 The Master: There are some of these exhibits I will have to retain, Mr. Chambers.

Mr. Chambers: Yes, I am going to give you a complete copy. I have not one now, but I will let you have my copy.

Mr. Ransom: Here is a copy (handing master).

The Master: I would rather take his.

Mr. Ransom: But his does not cover any modern years.

The Master: I will hear you. The reason I asked the defendants to speak first is that if I asked the complainant to talk then the defendants would talk and

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then the complainant would talk again, and I would have three talks instead of two.

Mr. Chambers: It is not 200, it is 300.

I call your attention to this significant little fact, that here is a company over here on Staten Island, and one of their representatives is here now and can hear me speak—the little New York & Richmond Gas Company, a small company buying small quantities of oil, were able to make a better contract in 1919, part of 1919 and up to March, some time in March, maybe it was March 20th, 1920.

Mr. O'Brien: March 31st.

Mr. Chambers: March 31st, 1920, for a less price 46544
than the Consolidated Gas Company. I know that the Consolidated Gas Company will say that we are now furnishing that company with oil about 7 cents, but it does seem to me that, looking over this table 300, the Consolidated Gas Company did not buy oil as reasonably and for as low a price as some of the other companies, nor make as advantageous contracts. Take the New Jersey corporation there, they had a five year contract which ran them through 1918 and through 1919, as I remember, at a very low figure.

The Master: New Jersey is not here.

Mr. Chambers: At three cents, wasn't it?

The Master: New Jersey does not seem to be 46545
here.

Mr. Chambers: New Jersey is offered in evidence separate.

The Master: I have Bronx, New York & Richmond, Queens—

Mr. Chambers: Then there was the Boston Consolidated had a five year contract that carried them through the years 1918 and 1919 at about 3 cents, as I remember. Now, I asked Mr. Addicks some questions in regard to that and he testified under oath that

46546 it was his opinion—let me see if I have it here—that in 1916 he felt oil had gotten as high as it would ever go.

The Master: Have you got a complete set of your tables for me?

Mr. Hayward: No.

Mr. Chambers: In 1916; he said that.

Mr. Clark: I got those that you spoke about last night.

The Master: I think you better get together for me a complete set of the originals if you have them.

Mr. Clark: I will try to get them.

The Master: Mr. Chambers has his tables ap-
46547 parently all bound up in a book. They are all together here, are they not, your tables?

Mr. Chambers: Not all of them. I have them in separate books, but I intend to give you one. May be that is a copy, I cannot tell yet.

The Master: I do not care whether it is a copy or the original.

Mr. Chambers: I intended to give you the tables like that, bound up complete.

The Master: Have you yours all together?

Mr. Ransom: They are together. They are not bound up in any book, because they are of various sizes and kinds. But we have them ready for you
46548 whenever you want them.

The Master: Go ahead.

Mr. Chambers: The Master did not hear me when I said Mr. Addicks said under oath when I put the question to him concerning oil, that in 1916 it was his opinion that oil had reached the highest mark it would ever reach, and we were trying to find out from Mr. Addicks why it was that in his infinite wisdom he did not see fit to make contracts like the contract that was made by the Boston Consolidated and the Public Service of New Jersey, you recall, for five years, which carried him through 1918 and 1919 at a very low figure, around 3 cents. And the only reason assigned by

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Mr. Addicks under cross-examination for buying oil for all these allied companies was, he said, that it was for the purpose of insuring uniform quality and supply.

If that is so, if that is the only reason assigned why the Consolidated should undertake to buy oil in such large quantities, then certainly the consumers of the Consolidated Company ought not to be penalized because the quantity purchased is so large that they are really at the mercy of one particular corporation.

It seems to me that you have to disregard and discard entirely, as you said during the course of the trial, the present prices, which are certainly no criteria of the prices that will prevail in ordinary times. 46550
Now, the oil of this little Richmond company was—

The Master: Let me interrupt you at that point. Is it your claim that even though I find as a fact that the price of oil has gotten to a point far in excess of its price at ordinary times, that that price will probably remain constant or high, at any rate for some years to come, that I must disregard that fact, that the price of oil is high and will remain high for practically an indefinite period?

Mr. Chambers: Shall I answer that by your own words, if I can find it here?

The Master: Why, yes. 46551

Mr. Chambers: I think I can remember the substance of it.

The Master: If you can find the place where I said if I find that its present price is normally high.

Mr. Chambers: No, but you said on one occasion you would not judge this case—

The Master: But I said if I find it was a normal high I would have to be influenced by it.

Mr. Chambers: That is just it. The Master did say during the course of this trial—you ruled at least

46552 three different ways on the same proposition, and you did say you would not judge this case by the future, and you did say that if these prices continued long enough they might become normal times. You did say that.

The Master: That is what I am asking you now.

Mr. Chambers: Haven't I the right to pick out of the phrase of what you said, that it is along the line which is correct?

The Master: I do not see how that helps us. I do not see how that helps me when I ask you this question. Assuming that I reach the conclusion upon the
46553 evidence in this case that the price now is high, and that when the 1918 prices were being put in and we were arguing that situation I did say that just because the prices were high in 1918, a war year, I would not be bound by it; assuming that I believe I am consistent in making that statement, as well as the statement that if I find that the prices reached in 1918 or again in 1919 reached a point where the proof would indicate or justify a finding that it is a normal high level, am I not bound to base a conclusion of law on what I find to be a normal high level?

Mr. Chambers: I do not follow you at all along that line.

46554 Mr. O'Brien: May I say a word here, your Honor?

The Master: No, wait until Mr. Chambers gets through.

Mr. O'Brien: Right on that point.

The Master: No.

Mr. Chambers: I do not follow you on that point at all, because the times are abnormal. You should dismiss the complaint under the circumstances, and not destroy this statute simply because prices are abnormal and high; particularly so in a court of equity. We will show you, and we have shown you, and it can

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be figured out from the exhibits in the case, that this company right up to the present minute, ever since this statute has been in force and effect, has enjoyed a rate of return in excess of a fair rate.

Now, when you have such a condition, and where you have the condition that prices are abnormal now, I say the only right and proper thing to do is to dismiss this complaint.

The Master: Have you that *per curiam* opinion on the application for the injunction here?

Mr. Ransom: I do not think so.

The Master: It seems to me the Judges in granting the injunction in the Brooklyn Union case were substantially in accord with what Judge Cardozo said in the Municipal case, when you had reached a present high normal level, which might continue for a period and it was not a temporary or fleeting thing. 46556

Mr. Chambers: Well, perhaps that decision was somewhat distorted.

The Master: As far as I am concerned as Special Master, I must be influenced, if not guided, by the latest expression of opinion of three judges granting a temporary injunction in the Brooklyn Union case. I have told you many times in this case that I have been very much impressed with Judge Cardozo's opinion in the Municipal Gas case; and I expressed myself very strongly as believing that to be the law, that if we had reached a point where after a year or two it looked as if the present high level was going to continue for another indefinite period, this company was entitled to relief, not by the destruction of the statute but, perhaps, by a suspension of its operation. 46557

Mr. Chambers: They did not say as much as that. They did not mean that.

The Master: I only glanced at it once. Mr. O'Brien, did you want to say something?

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Mr. O'Brien: Well, I wanted to say if you have in mind—well, I will say this case has not gone into 1920.

The Master: No.

Mr. O'Brien: Except here and there some reference to present prices. This case has been presented on a part of 1919, and even yesterday you expressed yourself as to taking a twelve months out of the calendar not being a fair basis for conclusions, for reasons which you then expressed.

The Master: But that does not bear upon the proposition that if the proof for the first ten months of
46559 1919 shows a constantly rising price, and the record taken as a whole would indicate that that rise in price was going to continue for an indefinite period, that I cannot assume what has happened since October 31st, 1919.

Mr. O'Brien: Well, what I was going to say was this—

The Master: There may be ample evidence in this case to justify a conclusion by me that the prices are still high.

Mr. O'Brien: What I was going to say is this—that considering present prices of oil, you have got to bear in mind that the record indicates that gas oil
46560 contracts as a rule are entered into some long time before the deliveries begin. We have proofs that there is a pretty fair supply of oil on hand in all the companies when they enter into a new contract; they are made far in advance of the period. So, if we are thinking about prices in the early part of 1920, we have got to carry our minds back to the time when diligent, prudent and provident managers of gas companies are making their contracts and the prices of 1919.

The Master: Anything else, Mr. Chambers, on this point?

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Mr. Chambers: Just this: According to these exhibits that you mention, the present tendency of oil is down. For instance, I claim that this Exhibit 325 is not of any value at all, but in 1918 the prices were sometimes—or rather the early part of 1919 they were 7, and they had dropped gradually down to the last price that Mr. Addicks had in his table here, which was 6.1. So that, if you give any weight at all to those exhibits, which I think are incompetent, and I think the record bears me out—

The Master: What was the last contract?

Mr. Chambers (continuing): —the tendency of the oil is down.

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The Master: What was the last contract made by the Consolidated?

Mr. Ransom: 6.08.

The Master: When?

Mr. Ransom: Well, that is in 1919.

The Master: I mean in the record.

Mr. Ransom: We offered them and handed them the 1920 contracts.

The Master: I mean the last contract in this record made by the Consolidated Gas Company was made when?

Mr. Ransom: The last contract in this record was made in March, 1919.

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The Master: At what price?

Mr. Ransom: 6.0824, and with variances according to lighterage or transportation to the different parts.

The Master: What was the last contract made by other companies in 1918-1919?

Mr. Ransom: The Bronx Gas & Electric Company, November 26, 1918, was 7.80, December 20, 1919, was 7.55; the Brooklyn Borough Gas Company, November 27, 1918, 7.75.

46564 Mr. O'Brien: Why they are paying 5 cents now.

Mr. Ransom: The Brooklyn Union Gas Company, December 22, 1919, is 7.05 to 7.55; Kings County Lighting Company, 7.495; New York Mutual, 7.0821.

Mr. Chambers: There is something wrong about that.

The Master: Why; is it too high?

Mr. Ransom: New York & Queens, 5.75; Queens Borough Gas & Electric, 7.

Mr. Chambers: In 1919 the New York Company was paying 3 cents and the Boston Consolidated, 3 cents.

46565 Mr. Ransom: That is absolutely untrue.

Mr. Chambers: Under the five year contract, 3 plus.

The Master: Where are the exhibits? Where is the proof of that.

Mr. Chambers: I want to know what he says is untrue. I am speaking from memory, but it is 3 something.

The Master: What I am curious to know is what contracts were actually made in 1919 for oil, at what price by any company anywhere in this record.

Mr. Chambers: Every contract that he has now mentioned, they were all not proven.

46566 Mr. Ransom: Everything was proven.

Mr. Chambers: They were admitted erroneously.

The Master: Have you anything else you want to say, Mr. Chambers?

Mr. Chambers: No, I think not.

The Master: Have you anything else on oil, Mr. O'Brien?

Mr. O'Brien: What I want to emphasize in regard to the coal and oil situation is this, and my firm belief is that the higher courts are bound to adopt it in any case which has been begun and litigated within

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the last year and a half. Possibly a year from now a case going up might be a little different, but my firm belief is that in the face of the selective draft law, the declaration of war, the passing of measures designed to win the war, the designation of a fuel administration commission, and the calling for labor for cantonments and munition factories and for service abroad and here, and then the absolute control of coal and oil to the extent of fixing a price for it, and the giving of preferences for war uses, and all those things, the hand of the sovereign power of the government working out into these various matters, will cause the courts to declare that as to that period they will 46568
not take up that period and use it in any way as a basis for determining the reasonableness of a rate.

The Court: I do not want to get into a discussion of the legal result. I wanted to get my facts clear first. Is there anything more that you want to say?

Mr. Hayward: I would like to be heard on this point briefly.

The Master: Go ahead.

Mr. Hayward: I thought at least that I was necessarily constrained to keep on trying this law suit which we are engaged in, and not these other cases. I have never been sworn as a witness in this case, like Mr. Ransom. 46569

The Master: Or Mr. Chambers.

Mr. Hayward: I can only take the evidence in this particular case and argue from that evidence and those facts.

I want to say this about this alleged skeleton in the closet of the connection between these two companies. I don't know anything about it. I presume as a normal person, that the gentlemen who invested in the Consolidated Gas Company's stock and also invested in the Standard Oil Company's stock did so

46570 because they thought that both were a good investment, and the years have certainly vindicated their judgment. They both have been excellent investments, and I wish I had a tenth of the stock that either of them have got in either of the companies.

However, in trying a law suit you have got to point out to the jury or to the Court the facts, and deductions from the facts that bear on this thing. My personal opinion is that Mr. Addicks is a gentleman of integrity, and I would not presume to stand up here and tell your Honor that Mr. Addicks wilfully and criminally—it would pretty nearly amount to that

46571 —went to the Standard Oil Company and paid more for oil than he could have gotten for somewhere else; but I will say that in my opinion Mr. Addicks did what you or I or anybody else would have done under the same circumstances, perhaps. You would go to an insurance broker for your insurance who brought law business to your office, and so would I, and so would anybody else. The simplest thing for you to say, if some other insurance broker had a claim on you would be, "Well, I didn't think your company was big enough to take care of my business." Now, that was the attitude that Mr. Addicks had. I think it was a mistake. It would not be a mistake in a

46572 private business, but I think it was a serious mistake in a quasi public service corporation such as this, that Mr. Addicks took the attitude that he did.

I direct your attention to your interrogation—

The Master: You don't have to, I recall particularly the impression it made on my mind.

Mr. Hayward: Your question and his answer, "Am I not right on that?" and his answer, "I think that is true," etc.

The Master: I remember my view of it, I remember the impression it made on me.

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Mr. Hayward: If I had been a stockholder of the Consolidated Gas Company not immediately concerned in its management I would have felt it necessary, if I had a right at all to make inquiries, to find out what the Consolidated Gas Company was paying more for oil at the same period of time than other gas companies were paying. In other words, while I would not have expected Mr. Rockefeller to give me a preferential rate on oil I certainly would not have expected to be penalized by reason of any incidental connection there might be between these two companies. Whether it was over-meticulousness on Mr. Addicks' part, over-caution, the Master can draw his conclu- 46574
sion as well as any of us.

There is another point about this oil situation that I feel it my duty to point out. Judge Ransom wrapped his white skirts around him in indignation and scorn, he may do that all he pleases, but the fact remains in connection with oil that we must draw whatever conclusion the facts lead to.

We know that back in the years 1903, 1904, prior to the other case, that the gas companies in this city were paying around 3 cents and 3 1/2 cents for oil. We know, because the figures do not lie. They could not have been specially prepared for this case, be- 46575
cause that happened many years ago. When this other case was started the price of oil jumped from that up to 4 1/2 cents. The figures show that it remained at that price. Why you must conclude. It remained at 4 1/2, 4.60, straight through. Then we find that the minute the other case was decided oil prices dropped from over 4 1/2 cents down to 3.27 in 1909. We know that that low level continued until the war, and the preparation for this case that we are now trying began, when those prices went up. I do not say that the Standard Oil Company juggled

40570 those prices for the benefit of either law suit. I say it is a matter we have to consider in connection with this case, it is our duty to consider it; and my personal opinion is that by the time this case is finished, and perhaps long before, we are going to find oil prices back to a low level. My theory is that there has never been a time when Mr. Addicks could not have gotten his oil from these other companies and had a reasonably dependable supply at a lower price than he did pay. My contention in this case is that the public should not be required to pay for Mr. Addicks' opinion that the Standard Oil Company was the
40577 only oil company in the United States that could supply this Consolidated Gas Company; that the Master, in determining what was the reasonable price to be paid for oil has got to eliminate what I call his over-caution, his over-meticulousness in this matter, and has got to start out on the basis of what could any independent buyer have gotten his oil for during these periods, and taking into consideration these other elements that have been brought to your attention.

I want to say right here that I think—and this has to do with this case, and it has to do with future cases—the economic loss to this community of this 22
40578 candle power thing is perfectly absurd and perfectly ridiculous. These men are building a four and a half million dollar water gas addition over there. Now, the thing that would solve this whole gas situation is to do away with that 22 candle power standard absolutely. I have been in favor of it for years. No man can approach that subject with a fair mind and not come to the conclusion that it is economically wrong and ridiculous for the bulk of the people that use gas in New York City to be penalized in order that a handful of people who have an open gas jet burning in

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some back closet or some hole in the wall on the East Side shall get *22* candle power out of that gas jet without a mantle. I want to say now that there isn't any question that the people of this community and the Legislature of the State of New York will change that law for them in sixty days any time they will ask them to do it on any basis which is fair both to the company and to the consumers in this town.

The Master: Why don't the Legislature determine what they believe is fair? They don't have to consult the Consolidated Gas Company.

Mr. Hayward: We see the price of oil erratic, fluctuating as it is, affecting millions of people in this 46580
town, and I say that this Gas Company was not earnest about an effort to get B. T. U. standard and get a fair price for gas under that standard. The Consolidated Gas Company had better not offer me a contingent fee basis to put New York City on a B. T. U. standard that will be fair both to the consumer and to the company, or if they do they will have a fee to pay, because anybody can do that. I say we have to take that into consideration on the question of their good faith.

The Master: Why doesn't the Legislature do it?

Mr. Hayward: They have not been asked to do it.
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Mr. Chambers: They have done it.

The Master: Colonel Hayward, I made a public statement expressing the view that you have expressed when one of the Senators of the State was in the room. I addressed myself very forcibly to it. While I was away I noticed a newspaper account of a discussion before the Public Service Commissioner on this very matter. It is a matter of public notice. Why should not the Legislature take it up and reach some intelligent result?

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In any conclusion I reach in this case I shall recommend, of course, if I recommend a suspension of the operation of this statute, a provision where, if this situation is remedied by the legislature and the cost of making gas goes down because of it, that this company shall not profit by it. It would be absurd to permit this company to profit by it if the legislature shall relieve them of the 22 candlepower obligation.

Mr. Ransom: The company would not want to profit.

The Master: I am not so sure about that.

Mr. Hayward: Here is the great wall that stands
46583 in front of the consumers of New York, here is the hand that is reaching into their pockets all the time and taking out extravagant waste.

The Master: I cannot charge that to this company, I charge that to the legislature.

Mr. Hayward: This company refused, and every one of them will tell you so, to go on a B. T. U. basis which will work great economies, without keeping the price where it is. In other words they want to make the cheaper gas, which I concede in the main would be just as useful to the people of this City, they want to make the cheaper gas and they want to get the same price as they are getting now.

46584 The Master: I don't think so.

Mr. Hayward: I know more about it than you do, I have been through it with them.

The Master: If your argument is based on the fact that they declined to accept the order made by the Public Service Commission, I do not agree with you at all. If I were the counsel to the Gas Company I should advise it against accepting that order.

Mr. O'Brien: Why?

The Master: Because I think it is a stupid order, full of obligations and tricks that are unfair.

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Mr. Hayward: I want to finish by saying this: The people of this city are entitled at the hands of this great corporation to have the most useful kind of gas for their use and the cheapest price at which it is fairly possible to make it.

The Master: There is no question about that.

Mr. Hayward: When the Consolidated Gas Company gets to a point of agreement with me it will be done, and it cannot be done without their aid and consent. There is too much inertia to overcome to do it.

The Master: If the legislature had intelligent leadership they could do it.

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Mr. Hayward: The B. T. U. system should be established regardless of the price now paid for gas, because under the new system of manufacturing a new price should be made. If 80 cents is a fair price now, then the price would be perhaps 70 cents. If 80 cents is not a fair price now, if it is too low, the future price might fairly be 80 cents. In any case that standard should be changed, and if these people were trying to serve the people of New York they would do it.

The Master: The only point of difference between you and me as to what you have just said is that I say that the legislature has no right to wait for the Consolidated Gas Company to come in and do this.

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Mr. Hayward: They don't know anything about it. it is the business of the Consolidated Gas Company to explain it to them.

The Master: It is the business of the legislature.

Mr. Hayward: I do not think this company, clinging to an obsolete system, making no real earnest effort to have that standard changed, has got a right to penalize the consumers of New York City because of temporary, even if not artificial prices for oil; and

46588 the Master has got to take the oil price here covering a period of years, and has got to go on the theory that it is going back to normal, because if you do not, our whole social structure is going to fall. It cannot be, we are not going to chaos and oblivion in this country.

Mr. Chambers: I want to set you right on something. You have been wrong from the beginning of the case down to the present time on a certain proposition, and that is this: In 1913, the legislature of the State amended the Public Service Commission law, Section 66, Subdivision 3. That amendment allows
46589 the Public Service Commission to permit companies to return, or to change the standard from illuminating to heating quality. It is there yet, but of course I claim that they could do here what they did up the State, unless this act which fixed the 22 candlepower for the City of New York is a special act and cannot be amended by that general act which amended the Public Service Commission law. That has not been decided yet.

The Master: What do you think about the general law amending a special act?

Mr. Chambers: I am on record as saying that it does not amend it.

46590 The Master: Well, that is what I say. The special act is in force down here.

Mr. Chambers: I say that. The Public Service Commission up in the Second District, however, felt that it did amend it, and returned to the B. T. U. standard.

Mr. Ransom: A very different situation.

Mr. Chambers: Their counsel advised them, I understand, that it did amend it, and they acted accordingly. That is the only authority up to date.

The Master: Let us get along now.

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Mr. Chambers: You understand that if that amendment was valid, it does the very thing you have been complaining that the legislature has not done.

Mr. Ransom: If your Honor please, there has been talk here about interlocking directorates between the Standard Oil of New Jersey and the Consolidated Gas Company and the effect that it may have had upon the price of oil paid by the Consolidated Gas Company. There is no proof in this record or any warrant in fact for such a charge.

The Master: Which charge?

Mr. Ransom: That there is an interlocking directorate. There is no evidence in this record that I 46592
can find, and I have looked it through pretty carefully, that there is a single director of the Consolidated Gas Company who is a director of the Standard Oil of New Jersey.

The Master: There is some evidence that Mr. Rockefeller is a heavy stockholder in the Standard Oil of New Jersey.

Mr. Ransom: There is evidence that Mr. William Rockefeller who is a director or trustee of the Consolidated Gas Company owns stock in the Standard Oil Company of New Jersey.

The Master: I think a substantial amount, too.

Mr. Ransom: Whatever may have been that rela- 46593
tionship, the facts are far different than have just been referred to. As your Honor said some time ago if any warrant at all is to be drawn from the fact that any persons interested in the Consolidated Gas Company has a stock interest or other interest in the Standard Oil of New Jersey, the inference would be that a lower price has been paid for gas oil by the Consolidated Gas Company than would have been paid if it had not been for that relationship, because this is the significant thing—Mr. Chambers does not want you to

46594 draw inferences from these contracts that have been put in evidence, and the summary of these contracts, because this is the situation: I tried to prove in evidence in this case, because I thought it was a little better as a basis, the amount actually paid by each Gas Company in New York City for the oil actually used. That you excluded on their objection. Take the contract quantities of all the oil that comes into New York City, all the companies from the Gulf Refining Company and the Texas Company, and the Standard Oil of New York and the Standard Oil of New Jersey, and all the companies that bring gas oil
46595 into New York City and have brought it here since 1904, and you find these facts: In the first place the average price paid by the Consolidated Gas Company was lower than the average price paid by all the other companies in 1918. It was lower in 1919. If you take the last ten years the quantity of oil received by the Consolidated Gas Company, the contract quantities were paid for at a lower price. The contract price for the contract quantities is lower in the case of the Consolidated than the contract quantities of all the other oil that came in from the Texas and the Gulf and the other companies. Or, take the entire period, go back to 1904, as Mr. Chambers wishes to do with
46596 his exhibit, and we find that the average contract price paid by the Consolidated Gas Company is lower than the average contract price paid by all the other Gas Companies within the City of New York. This goes to such a point that, for example, during the last ten years the Consolidated paid $1,300,000 less for its oil under its contract than they would have paid if they had paid the average price of all the other different contracts with the Texas and the Gulf and the other companies which supplied the other Gas Companies within the City of New York.

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So far as the present price of oil, so far as the situation in this case is concerned, I call your Honor's attention to this: We have had the testimony of Mr. Pearson, purchasing agent of the Public Service Corporation and the Philadelphia Company, and some other companies. Mr. Barnum of Boston, representing the Boston Consolidated, testified. We have had the testimony of various oil men, Lyons and Higgins and all the others, and they have shown the various factors that have combined to bring about a shortage of the supply of crude oil, an increase in the price of crude oil, an increase demand for gasoline which excludes the making of gas oil from crude; and we have 46598
the testimony of Mr. Little. Now, so far as this point in the case is concerned, take the testimony of Mr Little, who was certainly the only witness called by the defendants outside of these oil men, the only man who knew anything about the situation. What did Mr. Little say? What did Mr. Little say was the contract price for oil at the time he was testifying? He said that it was above 7 1 2 cents and might be eight cents, and that he expected oil would go to ten cents this year.

Mr. O'Brien: He said spot oil.

Mr. Ransom: Spot oil, yes, and that is all that anybody can get now, apparently. 46599

Mr. Chambers: No, that is not in the evidence.

Mr. Ransom: I would be willing to have this case determined, so far as the present cost of manufacture in relation to oil goes, on the basis of Mr. Little's testimony, that the present cost of oil under contract is in excess of 7 1 2 cents.

There has been reference here by Col. Hayward and others to the fact that this company has just gone ahead with the building of a thirty million water gas addition to the Astoria plant. The question is asked

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why, in view of the increase in the price of oil, is that done. The answer to that is in the record. Oil has gone up, it has gone up substantially, and every increase of one cent in the price of a gallon of oil means a difference of 4.1 cents per thousand cubic feet of gas. But, coal has gone up, and every addition of one dollar to the price of gas coal means an addition of ten cents per thousand cubic feet in the cost of coal gas; and in the proof in this case the prices recognized by Mr. Little as representing the present prices of gas coal at the time he was on the stand—there had already taken place an advance of $1 a ton in the
46601 price of gas coal over what the company had been paying under the exhibits in evidence in this case. With oil and coal both going up it is not merely oil, and the serious situation seems to be, as was brought out by the testimony of both Mr. Addicks and Mr. Woods, that with respect to coal there is not only an increase in price, but there is a shortage, so that the company has been compelled to curtail its coal gas production, shut down plants in part, and not make as much coal gas as it would, because of the shortage of coal, so that the company has been compelled to do what in the judgment of its directors was the best way of providing for the future in view of the increase
46602 both in coal and oil, and the shortage in the supply of coal, and the existence of this 22 candlepower law.

There is this further factor, and its bearing may not have come to your Honor's mind at the time it was testified to, namely, the extent to which the poorer qualities of oil which are being received in Boston, in Philadelphia, in New Jersey, and that the Consolidated and other companies are going to have to use here, the poorer quality of oil, the 18 or 20, or even 16 gravity oil, means a slowing up of water gas machines, a curtailment of water gas produced per given

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operation or per given quantity of oil, so that the situation may not improbably develop with reference to this addition of the thirty million water gas capacity, if the grade of oil becomes poorer than it has been will not represent, and under the testimony in this case would not represent an addition of thirty million to the water gas capacity of this company, but would mean an increase of not more than ten to twenty millions in the water gas capacity of this country.

The Master: Is there any evidence in this case that the poorer character of the oil decreased the capacity or the production?

Mr. Ransom: Yes. 46604

The Master: Who testified to that?

Mr. Ransom: Mr. Addicks went into it. At that time there was 100,000 gallons or barrels—

The Master: Will you make a memorandum of that, the page of the minutes?

Mr. Ransom: I will. Now, this is the situation, as I conceive it with respect to the present situation as to the price of oil and coal and these other materials. We are not in 1918 now, we are not in 1919 now, we are in 1920. We have watched these things now for several years, and this is a significant fact, whatever may be the assertion of counsel, the defendants have not put on this stand a single 46605 witness who says that the peak of prices has been reached, or that a break in prices is coming, or that the prices at the present level are not likely to continue for at least an indefinite period into the future.

Our view is this: We have had now a period of five years of prices which have come to this present level. There is no factor shown in the record in this case which can bring about a decline in those prices. All of the evidence in this case, as your Honor has pointed out, with respect to both oil and coal and

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pipe, in view of the increased cost of labor, the increased demands of labor, the diminished efficiency of all of the factors that have been put into this record would indicate an increase in the price of coal and oil and the other materials entering into gas and gas plants rather than a decrease; and we say that this condition continuing not merely over a single year, but several years, is a warrant for enjoining this statute under the familiar form of the equity decrees in such cases in the form of a decree that was made by Mr. Justice Hughes in the Brooklyn Borough case when this country was actually at war, under

46607 which, if there is a change in condition, either side may apply; or better still, under which it is left to the regulative powers of the State, as represented by its legislature and by its Public Service Commission, when conditions change to bring about proper revisions of rate in an expert and orderly way.

Mr. O'Brien: Well, they haven't any power, you know that.

Mr. Ransom: They should have. I call your Honor's attention to this fact in that respect in view of the statement that has just been made by the assistant corporation counsel, that the Public Service Commission has repeatedly ruled that it has the power

46608 when facts warrant, to fix a rate below 80 cents. Commissioner Maltbie, when he was a member of this Commission, in two or three cases, reduced rates below the rate fixed by the Act of 1906 as amended, so that rates were put in force—

The Master: We are getting into a discussion of the law now. I do not want that. I want to get my facts clear.

Mr. Ransom: With respect to the price of oil and coal, I think I should say, on this question of the change from the candle power standard to the B. T. U. standard, a word or two. This company of course

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wants such a standard. It has long sought such a standard. The amendment which was made to the law in 1913 was purposely drawn, and I know whereof I speak, was purposely drawn so as to prevent a change to a B. T. U. standard by order of the Commission as to companies within the First District.

There should be a change, that change would involve in a degree a reduction in the cost of making gas. The extent of that reduction is to some extent shown in the record in this case. There would be saving in oil, there would be an increase in certain other elements of cost.

Mr. Chambers: You have the right to petition the legislature. 46610

Mr. Ransom: This case, of course, has got to be decided now upon the basis of the statute as it stands, and the candle power standard as it stands, and when there was offered to this company in 1917, under some concept of the Commission that it possessed war powers, like the Federal Government, an opportunity to change to a B. T. U. basis of 650, which is far more than they have anywhere else that I can think of in the country, so that it is practically like going ahead on the candle power standard, with as much oil as before, not 585, like Massachusetts or like up state New York, and when they coupled with all this, all these other conditions, a reduction in price below 80 cents, why, as your Honor has held, the company in the exercise of its rights could not do that sort of thing. But, we take our stand here on the proposition with respect to oil, in the first place, that this company, year in and year out, whatever may be pointed out as to this or that, a little company which in a particular year has had storage facilities and was able to make a contract whereby it bought its supply, virtually spot, at some favorable moment in the market and could store it— 46611

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but take it by and large, even with those companies, with the irregularity of supply which some of them have experienced, and with the inferiority in quality that some of them have met, as shown by the contracts and the testimony, and on the other hand this Consolidated Gas Company getting the best gas oil in the country getting an absolutely uninterrupted supply so there has never been a question of their ability to keep going, and they paying less for it in 1918, 1919, in the last ten years, and the last sixteen years, surely there is no ground for any challenge or suspicion that the company paid too much.

46613 Then, the other fact, that under the testimony of all the witnesses called by the defendants the present prices for gas oil, on which this case should be determined, the present price is not five cents or six cents or seven cents, but it is above seven and a half cents, and I think your Honor would be warranted in reaching the conclusion that it is nearly or exactly ten cents.

The Master: Now, gentlemen, I think the coal and oil questions are the big questions, so far as cost of material is concerned. In the course of this trial counsel indicated at different times that certain items appearing in the books as charges against production

46614 or distribution, or general overhead, must be disregarded.

I had in mind the contention made by counsel for the defendants that there is no competent proof of expenditures for labor, clerk hire and other items. But I have received these books, and some other evidence as to the necessity for labor and the amount of labor, and if counsel so desire I will permit them now to point out to me any item or class of items that they question in Teele Exhibit No. 205, for 1918; and I shall assume that the same criticism applies to the same class of items in 1919.

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The reason I ask that the discussion take that form is that I still feel that I want to get the facts clearly in mind with reference to the cost of production and distribution, as distinguished from other questions raised by Mr. Chambers, such as used and useful property, the amount of invested capital, working capital, and other questions that I want to take up a little later, but I would like to have counsel if they will now criticise and challenge the items claimed by counsel for the complainant as the cost of production and distribution.

Mr. Chambers: I challenge it all in the first place, you know.

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The Master: I know that, but in the course of the examination of Mr. Teele you pointed out particular points of challenge. For instance, I think there was something said to the effect that I could not rely upon the amount of gas sold, for instance, on Schedule 1, where he shows commercially metered lighting at 80 cents, municipal lighting and prepaid gas sales of fourteen million and odd dollars, less a little deduction, making a total cubic feet sold of 18,000,000,000 at a price of a little over $14,000,000. I have the impression that somewhere somebody questioned that figure. If there is any question about it I would be glad to have it.

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Mr. Hayward: Do I understand that you are through with whatever you call it, your inquiry, into coal gas cost and water gas cost so far as the material that goes into them are concerned?

The Master: All that I want to make particular inquiry about. I assume that in the challenging of other figures some reference may be made to some of these items other than the particular items I referred to.

Mr. Hayward: The thing I particularly had in

46618 mind is the question of the residuals of coal gas manufacture.

The Master: I purposely passed that.

Mr. Hayward: There is no proof on that at all in the case.

The Master: I purposely passed that.

Mr. Hayward: I do not want to abandon it, unless you had it in mind to advert to later.

The Master: The two big items I had in mind are coal and oil.

Mr. Chambers: Suppose you give me half an hour on that exhibit.

46619 The Master: Meanwhile I will hear Mr. O'Brien.

Mr. O'Brien: You don't want to hear me in this symposium, do you? I am not going to try to cure the glaring defects in the failure of the company to bring forward witnesses who ought to be brought in here and cross-examined on this question of labor. Now, the error that was shown you in the manufacturing book of the 99th Street station is a fair illustration of what you would expect might develop if we had had here the superintendents of the stations, if we had had here the men who do the principal kinds of work; and I want to say in that connection, your Honor, not to take up time, because I am per-

46620 haps more anxious than anybody to see this case terminated—I want to say that I seriously differ with your Honor in regard to the amount of time that would have been taken up if this case had been properly tried. There would not have been an interminable trial if we had had Mr. DeCastro from the 99th Street station, and Mr. Ritchie, or whoever is in charge of the 21st Street station. If they were brought in, and the manufacturing books were produced, and the daily reports were produced, we would not be going over every report for every day and every year. That would have been covered in the

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examinations into enough of the reports taken at different times to satisfy you as to the correctness of the reports and the reliability of these men who recorded the facts in connection with the works. It is only by doing that that you can get right down to bed rock and find out how much labor they really did have, where you have the man under oath testifying as to the number of men. You cannot get that by drawing a silhouette of cost through the hypothetical testimony of Mr. Woods. In other words, even though Woods or Little or some other expert states that a certain amount of labor is needed, that a certain amount of coal is needed, and that other 46622
materials are needed to make gas, if the facts in the case showed that they used less, it is the facts that we want; and you cannot draw a conclusion. I have been trying to think it over from many angles, and I never could conceive just why the case was presented in that way.

Now, I say in regard to the labor, in regard to the incidental supplies necessary at 99th Street and 21st Street, in regard to the supplies necessary at Astoria, if the Astoria costs are directly part of this case, we haven't any proof, there is no proof before you except the computations made by Mr. Teele and the general books, erroneously received in evidence, and the 46623
testimony of an opinion character given by Mr. Woods.

Now, if we had the manufacturing reports here, if we found the bases of them, you would then have a chance to find out from the people working at the plant how many men were actually employed, and what materials other than coal and oil and labor were used. The errors that were conceded in the 99th Street books, the doctoring—we may assume it was doctoring—they may say it was another kind of error, and there was no attempt made to misrepresent the fact—you have there an example of what might have

46624 been disclosed it this case was properly tried. Hence, I challenge the amount of labor. I challenge the company on the proposition that they have not proven that there was not a duplication of labor. I contend that the manner in which they kept their accounts, coal handling labor, stamps the whole thing as designed to conceal the actual cost. If your Honor will let your memory run back to the cross-examination into the question of coal handling labor, you will recall there how confusing it was, and how it was not carried over with clearness into the final books of account, and there is no way in which any gas company can go into a rate case and prove their case properly unless they bring in and subject to cross-examination the men who made the gas, and the men who kept the time of these men.

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There is no proof here that the time was properly kept. The tests that were made by Mr. Teele as to the time of the men and the number of men, were entirely inadequate for such a great, big case as this. Taking a few months at random might, in a small company, satisfy the Court as to the reliability of the figures, but not in this case. There have not been such tests made as to meet the situation. That defect is not cured by the consent alleged to have been given

46626 to examine into the company's books I am not going to harp on that, your Honor, but the books that were turned over to the experts to be examined, and the underlying data, particularly the books of account, were in court most of the time. They were at least to your own knowledge in court some four or five months. We tried to work, and asked for papers here and there, and had to wait for hours to get them, and that is no way to have a frank disclosure. Just to show you an instance of that, we have the case of Mr. Edgerton, who went to make computations

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from these manufacturing books, and had the 99th Street station books turned over to him, which he afterwards found to be an erroneous copy and misleading.

Now, these little considerations I bring forward to you so you will bear them in mind.

Now, as to the Astoria, there isn't any proof. Judge Ransom frequently referred to the Sangster exhibit. Mr. Little, in his opinion testimony, said that he had set up certain quantities of labor as necessary. As to Astoria it would be well to bear in mind the fact that when they asked for the manufacuring record kept at the works it was denied them, nor was the 46628
men who conducted the works at Astoria brought in here. If they had been, you would have gotten down to bed rock in this case, and you would have disposed of this case at least two months earlier than the case will have been disposed of.

Those are considerations that I bring home to you. The question of how many men were necessary, the question of how many men were actually used, the question of what wages were paid, the question whether there was a duplication of work at Astoria, is all a blank in this case, and that proof is not supplied by anything done by the defendants, it is not supplied by the statement made by Mr. Teele as to 46629
the manner in which he examined the books of account. I say this so that you may know my mind upon that subject, and I have expressed myself at various times during the trial. All I need say today is to supplement what I have said right along.

On the opinion side of the case, the number of men necessary doing various kinds of work, so far as the defendant Swann is concerned, I think that is amply covered in the estimate made by Mr. Little. Of course, he sets forth there with minuteness that is

46630 quite unusual in this kind of case, an estimate of the number of men, and carried that out with splendid detail. I think that the estimate there as to labor necessary, and repairs, is a fair estimate. But, whatever may be said of Woods' testimony and Little's testimony, we still have to deal with the facts. How much did they pay, and did they duplicate the labor, was some of it unnecessary, and have they come forward with the proof covering those matters? You cannot have it in this case without having the 59th Street works represented by a witness under oath, and the head of the 21st Street plant likewise. If we had had
46631 them here and subjected them to cross-examination, and found that from day to day the coal was weighed and the reports were turned in from the generating house, and if they showed the quantities used, if we had the reports and details by the superintendents of the works, putting them under reasonable cross-examination, then you might have some facts on which to make a conclusion in this case, but that is entirely wanting.

In this connection my mind reverts to the proposition that is wanting in this case, and that is the question of inventories of stocks. That is wanting in this case, your Honor. I mean to say that the quan-
46632 tities of stock on hand from year to year, the periodical taking of stock and going into the quantities of oil and coal is an absolutely essential feature here, because while you might make some inference from the amount of coal and oil bought during a year you would still have to know what stocks were carried over from year to year and charged up, because in conjunction with all the other doubtful elements in the case there would be or could be errors in the matter of the quantities carried over from year to year which would be of very substantial amount. Hence the necessity and

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the burden upon the complainant to establish that they took stock from time to time and that at given periods they had on hand a certain amount of coal and a certain amount of oil, so that you might reasonably determine from primary sources, from direct sources, out of the mouths of witnesses under oath, just what was actually used. My contention is that that necessary proof is not supplied by the vouchers of the Standard Oil Company as to oil, and of the coal companies as to coal.

I will not at this time take up your time in going into the minute details as to coal handling labor and labor in the generator house, and other forms of labor 46634
in the several stations of the company.

The Master: Now, Col. Hayward, can you take up the situation?

Mr. Hayward: I only want to say that what I said about coal and gas, in my opinion, applies perhaps not to the same extent, but similarly at least to labor. We haven't put in any proof here on the amount of labor required, or the cost of what that labor should have been or will be, for the very simple and definite reason that the burden of proof in this case was not on us to do so. My contention is, as it has been from the start, that the Master erred, and erred fatally in allowing these books in, without the basic substantia- 46635
tion either in one form or the other that the law requires on these labor items. I have been disappointed, and in fact some day Judge Ransom is going to stumble over a lawyer sitting on a bench in some court on that point, because that is the law just as plain as anything in the world, and the Master has considered it and decided that I am wrong, but somewhere we are going to strike a judge who is going to say there is no evidence in this case on this proposition, and that being the fact, in my opinion, I certainly cannot be expected to make admissions here in this rapid fire,

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but and miss sort of an affair we are going through now, that will correct that defect by making an admission at all, and whatever I have said or will say—

The Master (interrupting) I do not want any admissions.

Mr. Hayward (continuing) Is based on the proposition that there is no competent evidence covering these or many other features of the case.

The Master What I had in mind was this, that a good many schedules and tables have been put in by all of the defendants, some of which I was able to analyze as they went through, but most of them I was

4:6:37 not. Now, I am quite sure that you and your associates introduced tables eliminating, taking the books as the basis, without of course assenting to them as proof, but taking them as a basis and as a result of an examination of records of the Gas Company, set up different results. For instance, somehow or other, I have a notion somewhere that somebody figured the amount of gas sold differently than Mr. Teele did.

Mr. Clark We never did that.

Mr. O'Brien Your Honor, on that point I want to say—

The Master (interrupting) No, I am talking to Colonel Hayward just now. For instance, Schedule 3, Gas Production, residuals produced, I don't know

4:6:38 whether your men challenged that.

Mr. Ransom That was Mr.—

The Master (interrupting) The next item 4, branch office, gross profit from sale of gas appliances. I know later on there were general office expenses and distribution items and legal expenses and items of that sort that were challenged, and what I would like to do is to get, if I can, the particular classes of items that counsel for either of the defendants believe I ought to eliminate in arriving at the proper cost of making

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and distributing gas. That is what I am trying to get at now.

Mr. O'Brien: Your Honor, will you permit me to interrupt for a moment—

The Master: I just want to get through with that.

Mr. Hayward: I thought you were primarily on the labor.

The Master: No, I said that was one of the things that would come in under this general criticism.

Mr. O'Brien: Well, in regard to that, your Honor, there isn't any proof in this case at all, the question of the sales.

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The Master: In regard to what?

Mr. O'Brien: In regard to the quantities of gas sold. You haven't anything here to rely upon except the statement made in a general way as to how these meters are read.

The Master: Yes.

Mr. O'Brien: Now, you haven't any record here of gas sold. They brought in no records or tabulations from the various works as to what the meters showed from time to time as to whether the meters were accurately kept. That whole subject has been entirely covered in the case, and it is another one of the great defects in the case. The question of transferred 46641
gas, you will find unexplainable.

The Master: If you think you are helping me with that kind of stuff, you are very much mistaken, it don't help me a bit.

Mr. Hayward: My mind is not agile enough to keep up with you, if the Master please. I thought we started out on coal, and had a sort of discussion about that, and then went to oil, and I thought we had gotten down to labor, but you must have gone off on another subject while I was thinking of the other.

The Master: No, I made a statement there ex-

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plaining my view. You may not have gotten it. I will repeat it briefly, and that was this: I wanted a more detailed discussion about coal and oil prices and contracts.

Mr. Hayward: Later some time.

The Master: No, I wanted them first. That is the method of buying coal and the price of coal and the quantity of coal used. I did not press an inquiry into the quantity of oil used, because I have got very clearly in mind what the record shows about the amount of oil used. Having gotten those three big elements entering into the making of gas, 200 pounds

46643 of coal as claimed by Woods, and as we discussed, and you pointed out it went down as low as 170 something as to quantity of coal used for a thousand cubic feet of gas, and having had the discussion as to the price paid for coal and as to the quantity of generator coal used in water gas, coke, and the price paid, and the oil prices paid, I doubt that perhaps from that point on I could get a better result by having counsel point out to me, if they will, the difference between their result of the examination of the book and the points they pointed out on cross-examination of other classes of items.

Mr. Hayward: You mean on the whole case, not

46644 just as applied to coal or oil or labor?

The Master: Yes.

Mr. Hayward: That is where I misunderstood you.

The Master: For instance, the Teele schedule starts off with this amount of gas sold, and it runs along and later on he has, for instance, an amount paid for gas transferred, and you have at least two different situations there. They paid the Astoria Company on one basis, and they paid the New Amsterdam Company and the Standard Company on another basis. The contention is made, undoubtedly, that they paid too

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much to the Astoria, because I remember a number of tables put in by Major Clark eliminating certain items. There was not any direct proof as to New Amsterdam or Standard. The record I think is that the Consolidated Gas Company did take over certain gas from the New Amsterdam and the Standard, and paid certain prices for it. Now, what I have anticipated, perhaps, was an attack as to a cost plus basis of paying. I rather anticipated that counsel would say when they reached that, well, that is not a fair basis to charge, because the higher the price for material and labor, the more profit the Standard and New Amsterdam get, and matters of that kind. The ques- 46646
tion as to whether this office building should be figured in the way that it was figured by Major Clark's experts, or by the complainant's experts, and what I would like to get, if I can, is, in order, using the Teele exhibit as a basis so that I might follow it through and make my notes as to just what the defendants contend with respect to these various classes of charges and credits, always having in mind Mr. O'Brien's contention and the contention of other defendants that there isn't any proof in support of these items. Now, didn't you have a table, Major Clark, showing the result of operations for 1918?

Mr. Clark: Yes, there is this table, Exhibit 461, 46647
I think. That of course does not include all of our claims.

The Master: Let us see it. That is just what I wanted.

Mr. Ransom: Exhibit 461 or 465.

Mr. Clark: Yes, Exhibit 465.

The Master: Copy of Defendants' Exhibit AA-465, adjusted cost of gas distributed in the year 1918. What I would like to have Major Clark do, if he will, is to point out where this table differs from the table prepared by Mr. Teele. That is what I would

46648 like to have. I would like to get the points of difference.

Mr. Clarke: Well, the first deduction there is the cost of making gas at the 42nd Street and 14th Street stations, on the basis that those plants are not economical plants.

The Master: Well, let me get that a minute. Where does that appear on the Teele exhibit? What item have you eliminated?

Mr. Clark: Well, on Schedule 3 we have got 14th Street, those residuals produced.

The Master: What have you done with them, what do you claim about them?

46649 Mr. Clark: Dr. Weber testified about them, that he did not allow for making the gas that had been made at 14th and 42nd Streets, because in figuring the Astoria cost there was an item of some $30,000 for war emergency that was included in there, which would cover the cost of making that gas at 14th and 42nd Streets.

The Master: Well, isn't his contention that they did not get any residuals from the making of the gas at 14th and 42nd Streets?

Mr. Clark: No. Of course, we admit that if they did not make the gas at the 14th and 42nd Street

46650 plants, they would have had to make the gas somewhere else.

The Master: Yes.

Mr. Clark: And in cutting out the cost of making gas at 14th and 42nd Streets, which was a small amount of gas—they should be allowed—

The Master: That is on Schedule 3, the cost of producing gas at 14th and 42nd Streets.

Mr. Clark: In each case, yes. I have not compared this with 205. It appears under gas production, cost of production.

The Master: I think, Major, that I may be able to get your views the other way. Now, do you in your

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tables anywhere question the accuracy of table 1, that is so far as the books show as to the amount of gas sold?

Mr. Clark: No, we have not.

Mr. Chambers: Table 1 or Schedule 1?

The Master: Schedule 1.

Mr. Chambers: Well, I do.

The Master: Well now, let us hear you on that, and see if we can get it.

Mr. Chambers: No, I want to be heard all at once.

The Master: Now, as to Schedule 2, Major, what did you do about that?

Mr. Clark: We have not questioned those. 46652

The Master: Now, on 3 you eliminate items 1149 and 1150?

Mr. Clark: Yes.

The Master: Because you on the other hand eliminate the cost of producing gas there, is that the idea?

Mr. Clark: Yes.

Mr. Ransom: Also eliminating the residual expense items?

Mr. Clark: Yes, the whole works.

The Master: Do you eliminate those too?

Mr. Clark: Yes.

The Master: That $1,357.24 and the $297.98?

Mr. Clark: Yes. 46653

Mr. Ransom: And you offset that against the United War Work Campaign Fund?

Mr. Clark: Yes.

The Master: Now, on Schedule 4, gross profit from sale of gas appliances at various branches of the company, have you challenged that in your figures at all?

Mr. Clark: I have not challenged that. As the Master understands, we do not admit that any of those things are proved.

The Master: I understand that. You have got a different result of operations in 1918?

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Mr. Clark: Yes.

The Master: I want to see where that difference comes in.

Mr. Clark: Yes.

The Master: Now, Schedule 5, do you change those figures at all?

Mr. Clark: I think we omit the interest item entirely from them.

The Master: You omit them?

Mr. Clark: Yes, we omit them.

The Master: Why?

Mr. Clark: As not proper results of gas business.

46655 The Master: That is a credit, isn't it?

Mr. Clark: Yes, certain items of credit that Dr. Weber did not consider—we did not consider it proper.

The Master: Are you sure about that?

Mr. Clark: No, I am not sure about that (examining paper). We did not omit that.

The Master: What?

Mr. Clark: We did not omit that.

Mr. Ransom: They did not charge us with that revenue.

The Master: They did not?

Mr. Ransom: No.

Mr. Clark: We have got it in, we did not omit that

46656 revenue.

Mr. Ransom: They did omit it.

Mr. Clark: Where do you find that?

Mr. Ransom: They did not charge the Consolidated with that revenue, owing to Dr. Weber's peculiar theory about—we admit the revenue.

The Master: Schedule 6, I note that you have different items.

Mr. Clark: Yes.

The Master: Now give me your views about that, will you?

Mr. Clark: Well we have taken the cost of the As-

toria gas from the Sangster statement, and of course that eliminates the interest on the Astoria tunnel. That does not appear on this schedule however. I do not think that our 465 affects this table of jointly used at all. 46657

Mr. Ransom: There is nothing in there that the Commission put in, I believe that challenges Schedule 6.

Mr. Clark: However, we do challenge some of these items as not proven.

The Master: Yes, I understand that. I am talking now about book results. You eliminate certain items that they have included in their books. 46658

Mr. Clark: Oh, just what we have eliminated, we have not eliminated anything on Schedule 6.

The Master: There are some that I agree with you on, and I am trying to locate and segregate the items that I think there may be some question about where I agree with you on it. Now, let us pass the tax question for a minute. Miscellaneous Rent Revenue and Deductions. Now, the change that you made there I think was on the office building.

Mr. Clark: Yes, we took in all of the revenue and charged all of the expenses against it.

Mr. Hayward: On the theory that the company was entitled to their profits.

The Master: Would they be entitled to charge a loss? 46659

Mr. Hayward: What?

The Master: Would they be entitled to charge a loss, if there had been a loss instead of a profit?

Mr. Chambers: I answered that yes.

The Master: No, you said you did not want to answer now. Now, you keep quiet, I won't hear you. You wait. You said you wanted to be heard all at once.

Mr. Chambers: I say I did answer that on the trial.

46660 The Master: You did answer it; now I am asking Col. Hayward. I could not get an answer out of Mr. O'Brien on it.

Mr. O'Brien: Well, I belong to the agnostic group.

The Master: No, you never answered it either, Mr. Chambers. You ducked good and proper. Am I right about that, Major?

Mr. Hayward: I do not know why you ask what I think about it in case there had been a loss on the building.

The Master: I ask you that for this reason. A rule to be fair must work both ways, mustn't it? I am
46661 puzzled about this question, and I have not reached any conclusion about it.

Mr. Hayward: I think it would depend on whether the loss was due to bad management.

The Master: Here is the point, as I understand it, the Consolidated Gas Company say they use part of this building, therefore we credit ourselves with a percentage of the cost of the building as an investment, and we charge ourselves with a percentage of the operating cost and so on.

Mr. Hayward: Yes.

The Master: And they say that the result of their doing that is that it shows a profit on business outside
46662 of the gas business; that they retain. Now, you come along and you say you cannot do that, you have got a whole building, and you are using that whole building in a way that means a profit to the gas consumer, and they are entitled to it. I say that may be so, but if that is so, then the gas consumer would be chargeable for the loss, if any, in operating the building, if there was a loss, and I put this question to Mr Chambers one way, when I said, suppose that for some reason or other that I do not know anything about, the electric light companies that occupy a part of the building, a number of the floors in that building,

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moved out, and let us assume a situation that does not exist today by any possibility, namely, that there is not any demand for office space, and they try in every possible way, by advertisements, solicitation and otherwise, to rent that space, but it is vacant and the operation of the building shows a loss. Now, if the gas consumer is entitled to the profit on operation, the gas consumer must be chargeable with the loss on operations.

Mr. Hayward: That might be true, but the way, of course, to meet that situation is that they have undertaken to do this thing, and they have built the building and they are using it in this way, and they have 46664
taken it unto themselves, and the consumer should have the benefit of the profits. Now, if they went into the general office building business throughout the city which was not connected with their business, why, no, I do not consider the consumer should stand any loss in real estate speculation, certainly.

The Master: Well, isn't this a real estate speculation?

Mr. Hayward: Well, it is in a way, yes, but it is so closely allied with the other business that it is not a real estate speculation.

The Master: They might, of course, have done this: They could have organized another building 46665
company and put up that building and then rented space out and received a proper price.

Mr. Hayward: Yes.

The Master: And all the interest the consumer has in that building is that this company shall be allowed a reasonable sum for reasonable and necessary office space, isn't that so?

Mr. Hayward: Yes, for its own needs. But they did not do that.

The Master: My questions may indicate how my mind is running, so that I might just as well say

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frankly that my mind is running that way. Suppose on analyzing the figures I find that, figuring it the other way, the cost to the consumer is $2.25, or $2.50, or something like that per square foot of space reasonably used, I am not saying whether I think the rest rooms and the restaurant and other space are reasonably used, but suppose I analyze it and find that the necessary office space, that is on the testimony, I conclude is necessary office space, we will say ten or twenty thousand square feet, figuring the way they want to figure it, shows a charge against the consumer of what is apparently and to my mind a fair
46667 charge for necessary office space, isn't that really all the consumer is interested in?

Mr. Hayward: Well, I think the consumer ought to get the benefit of the monopoly on that thing.

The Master: Well, I don't know, because the minute I—unless I am prepared to say that if the situation changes the consumer is liable for a loss in operation, then I cannot very well say the consumer is entitled to the profits. Now, I know your view—

Mr. Ransom: I am not sure that you do.

The Master: You claim that there is no profit?

Mr. Ransom: No, I want to point out one further thing, which might clear up the whole situation.

46668 The Master: Wait a minute now, I want to get Colonel Hayward's view in the light of what I have said.

Mr. Hayward: Major Clark tells me on that question that I have answered that it don't make so very much difference, that taking the whole building in makes very little difference on the whole basis of the rate base, but I would say that whatever profit there is on the building, the consumer should have the benefit of it. Now, you asked me if the converse is true.

The Master: Then you have got to agree that the converse is true, haven't you?

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Mr. Hayward: I would say yes, within certain limitations.

The Master: What limitations?

Mr. Hayward: Well, limitations of its being legitimately connected with the business and not a foolish or badly managed speculation.

The Master: Well, they are using four or five stories out of a nineteen-story building, and it is a question whether it is a gas operation, or a building put up for gas operations?

Mr. Hayward: It cannot be run at a loss unless they juggle it.

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Mr. Ransom: May I just say a word? There have been years in which there were what you would refer to here as a lack of profit. I do not think the term "profit" is the term that is properly applicable. It is really return on investment. Now, from the viewpoint of this complainant we do not care one way or the other which way it is done on this thing. If you want to put in all the revenue and charge against that all the expenses and put the entire office building into the rate base and allow a rate of return on it, we are entirely agreeable to that, at a fair rate of return. What they have attempted to do in the perfect team work which has prevailed between these defendants in this instance is that they want to put in all the revenues, and then not put in all of the building in the rate base. You remember you could not get Mr. Maltbie even to express an opinion whether he ought not to add to his table the inclusion of the general office building in the rate base.

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The Master: Well, I cannot quite understand that the defendants take that position.

Mr. Hayward: No.

The Master: They must take the position that if all the revenue is to go in, then the entire building must be taken into the rate base.

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Mr. Hayward: Yes.

Mr. Ransom: I believe that is so, generally. This method was followed with respect to the making up of the exhibits in this case, I believe upon my advice, because I do believe that it is the sound thing, for which we would have been criticised if we had presented our exhibits in any other way, namely, that you should state the company's reasonable requirements for office space in that kind of a building, with its quota of expense, and with that part of the building put into the investment and charge that and only that to the consumer.

46673 The Master: I think that would be so, Judge, but this is what bothered me. If there had not been these, what I call jointly used facilities in the building, like the restaurant and some other things, and the auditorium, I should be inclined to agree with you; in other words, if this was an ordinary office building, and you had the top five stories, or the top six stories and the rest of the building you rented out, and where it was easy to divide the thing, and say you have got so many square feet that you are using, and the balance of the building is so much, I think I should be inclined to agree with you, but there were so many other elements tied in with the thing, that as I tried to

46674 analyze it in my own mind I could not come to a definite division that satisfied me.

Mr. Ransom: I would be entirely willing to have this method that is apparently contended for by Col. Hayward followed, but I think you should realize that if it is done consistently so that the whole thing is carried out, it will cost the consumers more for gas.

The Master: How?

Mr. Ransom: Why, because you put in this entire sum into the rate base, and figure a rate of return at 8 per cent upon the entire sum.

The Master: Well, I don't know just what the rate of return will be.

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Mr. Ransom: Well, or seven per cent. They get the notion that they can work out a deduction here of a few thousand dollars by putting in all the revenues and all the expenses, and then not allowing but six per cent return on the investment, and I do not think any court in Christendom is going to hold that a six per cent return on the investment is adequate in these times.

The Master: Well, at six per cent it would be against you.

Mr. Ransom: Slightly.

Mr. Hayward: By maybe $16,000 difference. It may be about as much as $16,000 for the year 1918. 46676
I do not know just the rate, so I do not express any opinion on that.

The Master: Well, I am puzzled about it, and if I have got to decide it, I will.

Mr. Ransom: May I just make one more statement?

The Master: Yes.

Mr. Ransom: As to just what we have done? As the complainant excluded, as you will understand, both the investment in the rented part of the building from our investment as shown in the gas business—

The Master: Yes.

Mr. Ransom: And it excluded six per cent income 46677
on that rented portion of the building.

The Master: I understand that.

Mr. Ransom: From the income from gas business.

The Master: I understand that.

Mr. Ransom: Now, if you include the rented portion of the building in the investment, and the interest on that—

The Master: What interest?

Mr. Ransom: Six per cent, or whatever figure you adopt, why, we won't object.

46678 The Master: On what, you mean on the part that you used?

Mr. Ransom: Yes, on the part that is rented.

The Master: Why, no, your rent is supposed to give you a return.

Mr. Ransom: But we have excluded that.

The Master: I know, but if I take the suggestion of the Public Service Commission, and I take this building as a building, and I reach the conclusion that the amount represented by that building is $3,500,000, and I add that to your rate base that disposes of that, doesn't it?

46679 Mr. Ransom: Yes.

The Master: Now, as against that I find that you have used that part of the building, and that you collect rent from another part of the building?

Mr. Ransom: Yes.

Mr. Hayward: And part of it was used jointly, for which no rent was collected.

Mr. Ransom: But you throw all the revenues into the gas business?

The Master: Yes, and I find that you have collected, in round figures, from all of the tenants in the building, $100,000, and that you have expended for operating the entire building, $60,000, that leaves you

46680 $40,000, so that I charge you in these accounts with a net profit in the operation of that building of $40,000, don't I?

Mr. Ransom: Yes, and you have the entire building in the rate base.

The Master: Yes.

Mr. Ransom: Now, the real difficulty, I think, is this, that is a basis which would work out a little bit in the company's favor, but there would come the doubt whether in any Court or before any Commission the complainant would be able to sustain the inclusion in the rate base of the major portion of a

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nineteen story building which is used by persons who are in the nature of tenants.

Mr. Hayward: We have included it, your Honor; we have included the whole building in this rate base.

The Master: I was going to ask, in the light of what Judge Ransom said, assuming his figures to be correct—

Mr. Hayward: He has not given any figures.

The Master: That it would be an advantage to do that, do you still feel that that is the way it ought to be done?

Mr. Clark: Yes, I feel it ought to be done that way, although I do not want to be taken as admitting 46682
that they are actually using what they claim to use in the building.

The Master: Well, it would not make any difference to you on that theory?

Mr. Clark: Yes, it would make a difference.

Mr. Hayward: If they were using space that they could otherwise rent.

Mr. Hayward: We claim that it absolutely fails in their proof as to the space they use in that building, but we have not been able to apportion it just as the Master has.

The Master: Mr. Chambers, what do you think about it?

Mr. Chambers: You mean just on this office build- 46683
ing?

The Master: Yes. Mr. Ransom says that they are willing that I shall take the suggestion of Major Clark, but I will find upon analyzing the figures that it is a disadvantage to the consumer.

Mr. Ransom: It is a disadvantage to the complainant, because they cannot sustain it.

Mr. Clark: Well, we take the whole building in as a rate base, but we do not concede, in fact we deny that they have used the space in that building to the

46684 best possible advantage, that is we claim they are using space there for the Gas Company that ought to be rented to some one else.

The Master: They ought to have more revenue?

Mr. Clark: Yes. And while on their own figures it shows only $16,000 difference in 1919, with proper management and economical use of space for their own individual purposes, they could have shown a much greater return, in other words, it might be more of an important question than it is now if they had managed the building properly.

Mr. Ransom: The only space that was wasted dur-
46685 ing 1918 or 1919 was that occupied by the representatives of the Commission.

Mr. Hayward: Not by me, I did not bother you much.

The Master: Do you agree with Major Clark, Colonel Hayward, that I take in the entire building in the rate base, and charge the Gas Company with all the revenue?

Mr. Chambers: I think you ought to eliminate the restaurant and the auditorium and the other portions of the building which I tried to show—

The Master (interrupting): What do you want me
46686 to do? That is what I want to find out in figuring this office building. Do you want me to apportion it, or do you want me to take the entire building and charge them with the entire rental and consider the point made by Colonel Hayward that they did not get an adequate return, and the claim, practically that I ought to charge them more?

Mr. Chambers: I want you to eliminate the space that is not used and useful for gas business first.

The Master: Take up Schedule A. Is there any question about that?

Mr. Clark: Yes, we have not eliminated that from our table.

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The Master: You have not?

Mr. Clark: We do question the ten per cent item as not having been proved.

The Master: That is a credit, isn't it?

Mr. Clark: Yes, that is a credit, that is true.

The Master: Can we get down to the gas production, 14th Street station? I was looking at that exhibit, but I find under 14th Street station they said they included some items in gas production, 14th Street station, making the total, as I read it, of $30,361.25. Have you any figures that match those?

Mr. Clark: We take that out entirely.

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The Master: Oh, I see.

Mr. Ransom: That is matched against the war work.

Mr. Clark: Put in the cost of producing the gas somewhere else.

The Master: You say they ought not to have produced any at 14th Street?

Mr. Hayward: Yes, we say they ought to scrap 14th and 42nd Street.

Mr. Clark: Except at the 14th Street station there is something charged for storage expenses, the cost of the holder.

The Master: There is boiler fuel.

46689

Mr. Clark: $28,000.

The Master: That is somewhere else, I guess.

Mr. Clark: Yes, that is the holder expense.

Mr. Ransom: Let me show what they do on that. They do not eliminate it all, they leave a holder.

The Master: I am going to hear you later.

Mr. Clark: We eliminate it as a manufacturing plant.

The Master: 42nd Street is the same thing?

Mr. Clark: Yes, we take that all out.

The Master: Now, on 21st Street, I could not match up your exhibit figures with this.

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Mr. Vilas: Because they leave out four or five items of expense, miscellaneous works expense, repairs, gas storage.

Mr. Ransom: That was all brought out on cross examination.

The Master: I know it was, but I am trying to get a summary of it in mind now.

Mr. Vilas: I was trying to remind you why that difference—

Mr. Clark (interrupting): 21st Street station, material and labor.

The Master: 21st Street station, gas production—

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Mr. Clark: Yes.

The Master: You have got here labor and material used in production.

Mr. Clark: Yes.

The Master: Now, this is labor and material, isn't it, used in production?

Mr. Clark: Yes.

Mr. Ransom: They do not include all of the cost, all of the things that are called cost of production.

The Master: You give me a total of $2,659,412.32, and they give me a figure of $3,062,803.39. I would like to know what you have left out there.

Mr. Clark: We have credited the residuals there,

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you see.

The Master: What?

Mr. Clark: We have credited residuals in our table.

Mr. Ransom: We do, too.

Mr. Clark: But you do not do it on this page.

Mr. Ransom: The Teele residual credits are all in one place.

The Master: Well, now, let me see here. Superintendence, I do not see an item like that.

Mr. Clark: This is only material and labor, it does

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not include superintendence. I beg your pardon, it does. We have got the same items that they have. The last four items.

The Master: Handling spent material, that seems to be the same, doesn't it; cartage seems to be the same. I thought you might know just where the differences were.

Mr. Ransom: They were brought out.

The Master: Sundry supplies seems to be the same.

Mr. Ransom: They were brought out one after the other, and the amount and net.

The Master: Generator fuel, coal and coke.

Mr. Clark: The difference is all in the residuals 46694
that have been credited here.

Mr. Ransom: These items here are the same, the items in Schedule 9 are the same as in their exhibit except they have deducted residuals at this point, and we have deducted them at another point.

The Master: So that the result is the same?

Mr. Ransom: I believe so far as generator fuel, coal and coke, that is my recollection.

The Master: I mean as to gas production.

Mr. Ransom: Oh, no, because there are some things they have left out altogether.

Mr. Clark: What are they?

The Master: I think I will have to try to get at it 46695
in another way. I think you gentlemen will have to tell me where these differences are.

Mr. Ransom: We will do it right now. What are the items?

The Master: I have been trying to get the claim of the defendants. I will have to get it from the complainant, I guess. Are you familiar with the claims made by the defendant on these points here? In this Teele exhibit, for instance?

Mr. Ransom: I think I can find most of them, but am afraid they would not like my statement on it.

46696 The Master: Well, how am I going to find out where the differences are?

Mr. Clark: This is the only difference in that item, is the residuals, we deducted the residual items that appear on a former schedule, and we get the same $338,000 odd.

The Master: I understand then that your experts agree that the books show, not that I am justified in finding as a fact, that the books show gas production 21st Street station, $3,062,803.39.

Mr. Clark: Yes.

Mr. Ransom: Less residuals.

46697 The Master: And your residuals are charged. Where are your residuals on this table?

Mr. Clark: On Schedule 3, their Schedule 3.

Mr. Ransom: Ledger, folio 1151, on Schedule 3, shows residuals, $338,770.06.

The Master: And does the balance make the figures on—

Mr. Clark (interrupting): Yes, it does.

The Master: No, it does not. I start out with 3—no, they do not tally, the total here is $3,062,803.39.

Mr. Clark: The residual expense is the difference.

The Master: And the residual expense on the Teel-

46698 Exhibit is $338,770.06.

Mr. Clark: No, that is the residual credit, there is the residual expense below.

Mr. Ransom: Then there is residual expense $2,772.46, which has got to be added.

Mr. Vilas: And there are three other items there, repairs, station distribution and gas storage which they have not included.

Mr. Clark: Where are they in this schedule?

Mr. Ransom: They are under gas storage.

Mr. Hayward: They are not on Schedule 9.

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Mr. Ransom: Yes, but they are not under gas production.

Mr. Vilas: They are in there, but they are not in here (indicating).

Mr. Ransom: For instance, repairs are on page 12 of Schedule 9; station distribution is on page 16 of Schedule 9, and gas storage is on page 17 of Schedule 9.

Mr. Hayward: Well, $67,393.47, there is an item here, undistributed adjustment, steam and loss in gas volume, I think that figure will make that balance.

Mr. Clark: They credited them somewhere else, but not on this schedule. 46700

Mr. Hayward: This $67,393.00, does that make the balance?

Mr. Clark: Yes.

The Master: And then your figures agree with the complainant's?

Mr. Clark: Yes, these agree, we have said so right along.

Mr. Hayward: This is a deduction from their books.

Mr. Ransom: This item of undistributed adjustment, which is the reconciling figure, you found in what is called Schedule 9a, and this shows the amount $67,393.47 on page 11 of Schedule 9 there before 46701 you.

The Master: Yes, but what I am trying to find out is whether Major Clark says I have got to eliminate that undistributed adjustment.

Mr. Clark: No.

Mr. Ransom: They do not say they eliminated it.

Mr. Clark: We credit it in one place, and they credit it in another.

Mr. Ransom: As I understand the situation, your

46702 Honor, in 398 they have made up for 21st Street, 1918, what they call merely labor and material, which of course does not include everything. The next—

The Master: What was the purpose of making this particular table up? Why didn't you make up a table which included everything?

Mr. Clark: Well, we have a table that includes everything.

The Master: Well, which one?

Mr. Clark: This table here, Exhibit 131. That is as they are set up in the books, but this material and labor, was set up by Mr. Woods' hypothetical

46703 figure, and he started to use them, quantities mainly.

Mr. Ransom: I think this is true, that if you take into account the undistributed adjustments which they do not challenge, and if you add those items of repairs, miscellaneous works expense, gas storage and station distribution, which they eliminate and do not include in Exhibit 398, and take into account the residuals which are shown in a schedule in 205, that ph ir Exhibit 398 agrees exactly with 205, Schedule O.

Mr. Vilas: They do not claim it does not.

The Master: What is this Schedule No. 25? I don't know what exhibit number it is.

46704 Mr. Clark: 131, I think.

The Master: What is that intended to show?

Mr. Clark: That is a transcript of the book cost of production as it was set up on the ledgers, the various accounts that are included in the cost of production as set out on the ledgers.

The Master: Well, does that agree with Mr. Teele's figure?

Mr. Clark: I think it does, in every case.

The Master: Well, then, what is the purpose of it?

46705

Mr. Clark: Mainly to show the past years from 1918 and newer prices also.

The Master: Well, you show here for 1918 a cost of 45.72 cents per thousand cubic feet of gas made. Is that your figure, Judge Ransom?

Mr. Ransom: They have assembled the items a little bit differently. That is only the 21st Street station, I take it.

Mr. Hayward: You asked what the difference here was. It seems that on this schedule that we tried to strike a balance on, it seems our people have shown the quantities and unit prices, as well as the amount in dollars, and their schedule has only shown the 46706
amount. Do you see what I mean?

The Master: Give me Exhibit 364.

Mr. Hayward: You have got quantities, unit price of materials per thousand feet made, and the cost per thousand feet.

The Master: Just a minute.

Mr. Hayward: And this is also another difference. There is the years back to 1906, instead of only 1918.

The Master: The sheet that I am on now is 1918, see, cost of production and storage of the gas at each station. That brings me down to—

Mr. Ransom (interrupting): The total coal and 46707
water gas made by Consolidated from 1918 was 43.06 cents for both coal and water, the total make.

Mr. Clark: This was put in mainly to show the difference between 14th and 42nd Streets and 99th and 42nd Street plants.

Mr. Ransom: May I just call your Honor's attention to the fact that on this Exhibit 364 the figure for coal and water gas made by the Consolidated is 43.6?

The Master: Yes.

46708 Mr. Ransom: But under the set-up as it is in 364, the item of gas storage at works and distributing holders, which includes, you see, gas storage at works, is put down at a later point. Now, in the set-up of Dr. Weber, the gas storage at works was put in higher, I mean was put in so that it was figured into that.

The Master: It makes it 45.72.

Mr. Ransom: Well, it is 45.72 at 21st Street alone or all of them?

The Master: No, that is the grand total. That is all of them. The works is 44.24.

46709 Mr. Ransom: I think roughly that would just about make the difference, but of course does Dr. Weber's statement include 14th and 42nd Streets at all?

The Master: Yes.

Mr. Clark: Yes, 21st, 14th, 42nd and 99th.

The Master: My impression would be that this is a calculation from your books without the elimination of any item.

Mr. Clark: Yes; it was one of the bases for Mr. Hines' hypothetical question.

Mr. Ransom: 131 was, you mean?

The Master: Yes.

46710 Mr. Ransom: On this matter of 398, your Honor may perhaps recall that when the witness Cohen was on the stand and being cross-examined about it, it appeared that certain of his quantities and units of material per thousand were wrong, but his amount of money was right.

Mr. Vilas: The dollars was right, and he made divisions to get at the quantities, instead of taking our figures.

The Master: This is what is in my mind. I am not at all concerned whether one exhibit is gotten up in one form and one is gotten up in another form.

46711

What I want to know now is whether, assuming that I take book entries—

Mr. Clark: Yes.

The Master: In connection with other evidence in the case, as proof of the fact.

Mr. Clark: Yes.

The Master: Whether there is any difference in result between your experts and the Consolidated experts as to what the books show on cost of production.

Mr. Clark: Not as to cost of production at the various plants, no.

The Master: All right. 46712

Mr. Hayward: According to the books.

The Master: Yes.

Mr. Clark: They just set up what the books show.

The Master: There is no item you are asking me to eliminate, assuming the book figures?

Mr. Clark: No.

Mr. Ransom: At 14th and 42nd Streets.

The Master: Yes, I understand that. Now, miscellaneous works expense, is there any question for me there, from your viewpoint?

Mr. Clark: 14th and 42nd Street figures.

Mr. Ransom: Well, that runs all through Schedule 9, doesn't it? 46713

Mr. Clark: Yes.

The Master: Otherwise you do not ask me to eliminate any item of figures other than 14th and 42nd Streets?

Mr. Clark: No.

The Master: Now, on the next schedule, cost of production, repairs and works, do you want me to eliminate 14th and 42nd Street?

Mr. Clark: Yes.

Mr. Ransom: And under Exhibit AA-465 there

46714

is a $3,000 item for repairs which Dr. Weber admitted in a way that was discussed on cross-examination.

Mr. Clark: Well, that $3,000 item is based on our Schedule 130, which shows the cost for the years 1906 to 1918, and the average of that cost.

The Master: And for the 1918 operation you want me to eliminate repairs, works and structure, 14th and 42nd Streets?

Mr. Clark: Yes.

The Master: And also the items repairs furnaces, boilers and exhausters?

46715 Mr. Clark: Yes.

The Master: Now, repairs steam engines, you want me to eliminate?

Mr. Clark: Yes.

The Master: Repairs miscellaneous, power plant, 14th and 42nd Streets?

Mr. Clark: Yes.

Mr. Ransom: I call your Honor's attention to the fact that on Exhibit AA-465 there is this $3,000 item which runs through these various accounts of repairs based on their theory of continuing some kind of a holder station there.

46716 The Master: Well, we are now talking cost of production.

Mr. Ransom: Well, that is part of it, this was repairs—these repair items that you are discussing, this $3,000 item, some of it is made up of items on these very things that you are discussing.

The Master: Wait a minute until I get Major Clark's reply. Repairs benches and retorts, you want me to leave them out at 14th and 42nd Streets?

Mr. Clark: Yes.

The Master: And purification apparatus?

Mr. Clark: Yes.

46717

The Master: And repairs to holders?

Mr. Clark: Repairs to holders, we allow them of course. Well, of course, that covers more than this item; we allowed $3,000 for the entire repairs of holders.

The Master: How about miscellaneous equipment?

Mr. Clark: Well, we would eliminate that.

The Master: And repairs tools?

Mr. Clark: The same for that.

The Master: Now, gas storage, 44th Street station, do you attack that at all? These items of expense for gas storage at various stations, 44th, 63rd, 65th, 111th? 46718

Mr. Clark: No.

Mr. Ransom: Oh, they leave them out of Exhibit *398* and *399*.

Mr. Clark: That is only supposed to be material and labor.

Mr. Vilas: What does gas storage consist of besides material and labor?

Mr. Clark: Material and labor producing gas.

The Master: Have you made any change in the figures on Schedule 9A, estimated cost of steam supply, estimated loss of volume?

Mr. Clark: We took those figures as they stand 46719

The Master: Now, distribution, distribution superintendence, distribution supplies and expenses, meter and installation work and so on, are there any of those items that you question as to classes, that is as to that kind of expenditure or as to the amount as appearing in the books?

Mr. Clark: No, there is none except, of course, we have repairs to street mains and repairs to meters and repairs to gas appliances, we question those, though not on these exhibits.

46720

The Master: Why do you question repairs to street mains?

Mr. Clark: Because it appears that the Consolidated repairs the street mains of all the companies, and I do not think it was proven that they charged to the other companies the proper amount of cost for it.

The Master: I see.

Mr. Clark: And as to repairs to meters.

The Master: Repairs to services the same thing?

Mr. Clark: Yes.

The Master: Repairs of meters?

Mr. Clark: Repairs of meters, the point on that

46721 is that the Standard Gas Light Company repairs all the meters, and I think all the appliances of all the companies of the system, and there has been no proof that it was done economically or done at cost, and no proof as to the reasonableness of the charges.

The Master: Well, how about these repairs of buildings, street departments, and shops, no number? [illegible].

Mr. Clark: There is no change in that.

The Master: And the other repairs of buildings, various buildings, any change there?

Mr. Clark: No.

The Master: Repairs to tools and implements?

Mr. Clark: No, there is none there.

46722 The Master: Now, gas appliances, you say goes into the class—

Mr. Clark (interrupting): Standard Gas Light Co.

The Master: Where they do work for other companies?

Mr. Clark: No, where the Standard Gas Light Company does the work for the Consolidated.

The Master: Gas appliances, too?

Mr. Clark: Yes.

The Master: I thought it was only meters. Does that apply to gas appliances, too?

46723

Mr. Ransom: Repairs to appliances, yes, sir.

Mr. Clark: It amounts to some $300,000.

The Master: Commercial salaries?

Mr. Ransom: Do you want to hear anything said on that?

The Master: No, I will hear you later. Now, I come down to commercial salaries, Hester Street Branch. Are there any items there questioned by you?

Mr. Clark: We have not questioned any except generally, of course.

The Master: Promotion expenses. What is your view about that?

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Mr. Clark: We have questioned several of the items under promotion expense, particularly the advertising in Gas Logic and newspaper advertising, on the ground that it has not been proven that they have made these advertisements, that the advertisements are of such a kind that they would properly promote the business, and also there is Mr. Livingston's expenses that we question.

The Master: Where are Livingston's expenses included, do you know in which item?

Mr. Clark: Some of it in advertising, and some of it in general expenses.

The Master: Now, the promotion expense utilization department, anything special about that? 46725

Mr. Ransom: Ought it not to appear with respect to these expenses, commercial and promotion expenses, that Dr. Weber's table of adjusted cost takes over exactly the company's figures?

Mr. Clark: Well, I of course understood that that does not limit our claim.

The Master: He is simply making some tables based on the book entries.

Mr. Ransom: Not on this.

467 26

The Master: How about promotion expenses utilization department, are there any items there that you question?

Mr. Clark: We have not questioned them in our tables, but we challenge the distribution of that expense among the various companies as not proven as reasonable.

The Master: Now, the item of salaries, general office.

Mr. Clark: Out of that we only took out first the $150 a day which they charged the U. S. Government, on the ground that they should properly be

467 27 credited to that account. They did not prove that they had any more officers. Then we have deducted one-third of the general offices—salaries, general offices, general office supplies and expenses and the legal expenses.

The Master: General office supplies and expenses, one-third of that you have taken off?

Mr. Clark: Yes.

The Master: Well, have you taken off one-third of the entire item of salaries general office, or just the general officers?

Mr. Clark: Yes, we have taken out all of that on the ground that they all worked for the various com-

467 28 panies.

The Master: How about miscellaneous general expenses?

Mr. Clark: I might say that the basis on which this has been done, this reduction, is the proportion of the gross revenues of the Consolidated Gas Company in its gas business to the gross revenues of the system as shown in their gross earnings tax report, on the basis that these general officers and people who work for them have the responsibility of the entire system.

The Master: Yes, I remember that.

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Mr. Clark: And we charged to them that proportion.

The Master: There was a number of items on this miscellaneous general expense that you attack there.

Mr. Clark: Yes. The biggest item is the defensive emergency service and United War Work Campaign, those I think are not challenged.

The Master: Yes. You mean that the gas company does not claim them?

Mr. Clark: I do not understand they claim them. They do not claim the United War Work Campaign.

The Master: Yes, but I understand they claim the defensive emergency service. 46730

Mr. Clark: Well, they may claim it; I do not know.

Mr. Ransom: Well, the statute enjoins upon us the deduction.

Mr. Clark: We cut out the publicity expense, which is a good deal of Livingston's expenses; we cut out the meeting fees, on the ground it is not proven to what extent those meetings were to the benefit of the gas business and of the complainant company, and we cut out the engineers' society, eliminating engineering society, the gas accountants' society and the other societies, the donations and the item of $27,780.85 miscellaneous, which also included a considerable portion of war work or defensive emergency service, 46731 which was not charged to that account. We put in vouchers on that, if you remember.

The Master: What do you say about legal expenses, you want them all out?

Mr. Clark: No, we charged one-third—we have deducted one-third.

The Master: One-third of it?

Mr. Clark: Yes, on the same basis.

Mr. O'Brien: I am not concurring in the quantities here, your Honor, I would like to have that understood on the record.

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Mr. Clark: Well, we are not admitting that they have proved even two-thirds of them.

The Master: Now, claims and arrears expense, what do you allow on that table?

Mr. Clark: We do not make any claim about that at all, on our exhibit.

The Master: Insurance, any question on that?

Mr. Clark: We credit to the insurance item the amount of income which they received from the insurance fund.

The Master: Vacation and sickness, what about that?

46733 Mr. Clark: We do not change that item.

The Master: Disability?

Mr. Clark: No.

The Master: Just look down and see if there are any other items that I have got to look into, will you?

Mr. Clark: No. About that legal expense, so far as the one-third goes we should have deducted from the $42,000 whatever has to do with this rate case before reducing it by one-third.

Mr. Ransom: There wasn't any in 1918, in connection with the rate case.

Mr. Hayward: The third deduction is from the
46734 general legal expenses.

The Master: There wasn't any in 1918.

Mr. Clark: We question the automobile expense, though it is not included in this schedule, and claim that it has not been proven.

The Master: Why?

Mr. Clark: And this contribution of $40,000 we have eliminated.

Mr. Ransom: What $40,000, to the Employees Mutual Aid Society?

Mr. Clark: We question that but did not eliminate it in our table, the Employees Mutual Aid Society.

46735

Mr. Ransom: Dr. Weber said he eliminated everything that had not been proved to his satisfaction, and he did not eliminate it. What is meant by saying that you question it, you have not eliminated it in the table.

Mr. Clark: We claim that you have not proven that it is properly part of the gas expenses.

Mr. Ransom: Dr. Weber said he eliminated everything that had not been proved to his satisfaction, and he did not eliminate it.

Mr. Clark: I do not think you will find that.

Mr. Ransom: That is his identic words.

Mr. Clark: Well, maybe I disagree with him. 46736

Mr. O'Brien: It does not mean anything in my young life if he said that.

Mr. Ransom: Nor mine either.

Mr. O'Brien: It does not bind me, you know; I am not bound by the Public Service Commission.

The Master: I think that exhausts the cost of production and distribution, doesn't it?

Mr. Clark: And we have reduced the general amortization. That comes later. That is as far as production cost.

The Master: Well now, Mr. Chambers, do you want to say anything about these items?

Mr. Chambers: Yes, I want to say first that I do 46737 not concur in all these. I question practically all the items generally on the ground that the books were not properly proven.

Mr. Hayward: Well, of course we do too, we have said that repeatedly.

The Master: That is just a waste of time.

Mr. Chambers: And then the items themselves were not properly proven.

The Master: There are some classes of items that if they had been properly proven you would still object to, wouldn't you?

46738 Mr. Chambers: Oh, yes.

The Master: What are they?

Mr. Chambers: Well, let us take up the general office salaries.

The Master: Yes.

Mr. Chambers: General officers.

The Master: Yes.

Mr. Chambers: And all those on Schedule 10, I think under the rule that I have in mind you will have to throw them out entirely, although Dr. Weber deducted one-third.

The Master: What are those?

46739 Mr. Chambers: You will recall that Mr. Addicks and Mr. Woods—

The Master: You are now talking about salaries, general office?

Mr. Chambers: Yes.

The Master: An item of $334,000?

Mr. Chambers: Yes.

The Master: That whole item?

Mr. Chambers: Yes.

The Master: You think all of it ought to be thrown out?

Mr. Chambers: Yes, I do not think any of it was proven so you can say what part of it is attributable

46740 to the gas business. Now, some of these men devote some of their time to that branch of the gas business which does not relate to the making of gas. There is some evidence of that. For instance, the president himself, Mr. Cortelyou, devotes some of his time to that part of the Consolidated Gas Company which does not make gas, namely, he devotes some of his time to the care and management of the securities of the company, and such things as that. I think he must necessarily devote some of his time to the branch of the business which is not gas making. Doesn't your Honor think so?

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The Master: Well, I will answer that when I decide the case.

Mr. Chambers: Then Mr. Carter admitted that he did, but he tried to make it appear as small as possible, but he does devote some of his time to that branch of the business which is non-gas. Then entering into this is another question, some of these men devote some of their time to the other companies, no account is kept of it, no charge made to the other companies at the time, and these men are high salaried men, like Gawtry.

The Master: All right. Now, I will let you go until about half-past two. 46742

Recess until 2:30 P. M.

Afternoon session.

The Master: All right, Mr. Chambers.

Mr. Clark: Might I say something?

The Master: Yes.

Mr. Chambers: When recess was declared I had already said—

The Master: Major Clark, I thought, wanted to say something. 46743

Mr. Chambers: Very well.

Mr. Clark: On this Schedule 6, when we were going over it the Master asked me if we made any claim, and I said not on our exhibit.

The Master: Yes.

Mr. Clark: We do attack those items particularly, on the ground that there is no proof. For instance, the Astoria Light, Heat & Power Company, the last proof as to the use of the land, bulkhead and conveying apparatus was as of 1909, and that was never brought up to date.

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The Master: As to the credits?

Mr. Clark: As to the amount of land and the amount of stuff that was used.

The Master: I see what you mean.

Mr. Clark: We claim there is no proof of that.

The Master: In other words, you claim if they are using more land now the charge ought to be more?

Mr. Clark: Yes, and there is no proof what they are using today.

Mr. Ransom: Mr. Woods covered that quite thoroughly down to date.

The Master: All right, Mr. Chambers.

46745 Mr. Chambers: As I was saying when recess was declared, I challenge the entire exhibit on the grounds your Honor knows about, that there is no competent proof of the matters set forth in the exhibit. I think I was addressing myself particularly to the Salaries General Office, and pointed out that the complainant offered no testimony of any kind to tell you how you might apportion the salaries to that branch of the business which is non-gas and to the branch of the business which is gas making.

Also there is no evidence on which your Honor could base a finding as to how much of the time of various of these employes was devoted to the affairs

46746 of the Consolidated Gas Company, relating to the making of gas. Mr. Gawtry, I think it was, and possibly Mr. Addicks, testified that substantially all of the employees—I presume it was Mr. Gawtry—substantially all of the employes in this office devoted some of their time to the affairs of these other companies, and no record is kept of the time or any attempt made to allocate or apportion it to the other companies in the Consolidated System.

Speaking of these Miscellaneous General Expenses, they are in the same situation as the other. I say

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there is no competent proof here that the books grow out of many of these things in here. Mr. Teele testified from time to time that in making up this exhibit he not alone used the books, but he used conversations he had with Mr. Woods and with Mr. Ulrich, and he used the State tax returns and so on in making up the exhibit.

We have, during the course of the trial, from time to time challenged specifically a number of these items under General Miscellaneous Expense, like publicity expense, meeting fees, engineers' societies, and those spoken of by Major Clark, and I challenge some that he does not.

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In regard to the Schedules 14-A, B and C, yesterday I moved to strike these schedules out entirely upon the ground that they were made up from information which Mr. Teele said he obtained from the returns made by the Consolidated Gas Company to the State Board of Tax Commissioners, which returns are not in evidence. That would dispose of those three schedules, in any event. There is no competent proof of any of the matters set forth in those three schedules.

As to the legal expense, there was no testimony that I recall as to just exactly what the company paid that money out for. These items here, like Vacations, Sickness and Disability, Contribution to Employes Mutual Aid Society, Superannuation—I challenge them all, because there was no testimony offered outside of the books, and, of course, that I challenge, to prove what the money was expended for, and the burden was on the complainant to show it. That is true, I think, of all the rest of the items on Schedule 10. This item of plant withdrawn from service, that was taken up during the trial. You recall something of what was said about that.

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The Master: What are you referring to now?

Mr. Chambers: That is over here on Schedule 12.

The Master: Tell me more about that plant withdrawn from service.

Mr. Chambers: The policy was, and this company pursued the policy in some instances, as we pointed out in one item, whereby for 34 years they carried on their books some property, which had ceased to be used, as a part of their capital.

The Master: Do I understand this item on Schedule 12, "plant withdrawn from service" $601,000, is charged against operating expense for that year? That is not in renewals and replacements account?

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Mr. Ransom: That is a charge against that account for that year, for property withdrawn from service.

The Master: When you withdrew property from service you charged it against renewals and replacements?

Mr. Ransom: We charged the loss to that account under the authorities and under the rule that the loss is what is charged.

Mr. Clark: Our contention is that they should set up their three cents per thousand, which they said was the basis of their charge. That is what they said it ought to be. According to the uniform system of accounts, they are supposed to set up an amount each year for that charge, because it varies in different years. To take the actual expense of any one year is not fair. They set up in 1915, as you remember it was brought out on Mr. Woods' cross-examination, the three cents which they have been carrying ever since then. We claim that that should be allowed instead of this amount here, which amounts to about 3 1/3 cents.

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The Master: 3 1/3 cents a thousand cubic feet.

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Mr. Ransom: May I just say a word on that? We want to clear that up. In the particular year 1918, due, of course, to factors with which your Honor is familiar, the amount of the actual charges, $601,450.69 was the actual, and for that year, on the basis of 3 cents per thousand cubic feet of gas sold would have been $540,877.35. Of course, what the company does, they charge during the year to this account the loss on property withdrawn from service, and then at the end of the year that is charged against the 3 cents per thousand cubic feet of gas sold that had been set aside.

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Over the period of years under the testimony in this case the figure, the actual figure, has run a little bit higher. I think, though, since 1884, it has run about 3.30. Under the testimony, in the last few years, or since 1906, it has run a little over 3 1/2 cents. Of course, especially in these recent years, with the higher costs of labor, materials, and the like, it has run about 3 1/2 cents, as it does in this year 1918.

The Master: Let me interrupt you, will you? I do not think we need spend any more time on that, Mr. Chambers, is it your contention that this $601,000 should be eliminated, but that I should in fixing the cost of the gas allow three cents in place of that, the same as Major Clark contends?

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Mr. Chambers: Well, no, I do not think they offered—my point is that they have not offered any proof of any amount that you could take for renewals and replacements—any competent proof, outside of what Mr. Teele said he found in the books.

The Master: Major Clark's view of it is, I think, probably the correct view, that as the company established a three cent reserve for renewals and replacements some years ago, that ought to be the basis for calculating this renewal and replacement account; but I think it ought to be more than three cents now.

46750 Mr. Clark: If they thought it ought to be more than three cents they should have set it up in 1918.

The Master: I do not care anything about that. The fact is that in 1918, they claim it cost them $601,000 for renewals and replacements. You say you are quite willing to have them take the three cents that they established some few years ago?

Mr. Clark: Yes.

The Master: I say I do not think that is fair. If three cents was fair a few years ago, then 3 1/2 cents is fair now.

Mr. Clark: They come in with the claim that they
46757 run their books in accordance with the uniform system of accounts, and they are bound by it.

The Master: I will do either one of two things, take the $601,000 as the actual amount charged to renewals and replacements, or give them 3 1/2 cents.

Mr. Ransom: In the prior testimony there came a question whether they should be allowed or the company should be entitled to include in its operating expenses the amount which they set aside as a reserve. That was litigated and decided adversely. Contrary to the company's claim, it was held that the actual amount must be controlling in the operating expenses, and not the amount which the company set aside.

46758 Now, that amount might be too high or it might be too low, but the real thing that is chargeable against the consumer is not the amount set aside under a rule filed with the Public Service Commission, or otherwise, it is the actual amount, when ascertained.

Mr. Chambers: How are you going to base any finding on testimony of six hundred and some odd thousand, that renewed and replaced something, when they have not offered any proof as to what it was? I cannot see it.

Mr. Ransom: That was gone into by Mr. Mrich in very great detail.

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Mr. Clark: If your Honor please, there is now a balance in this three cent account of a considerable amount, having been set aside over a series of years—replacements in that account. There is a balance of $98,000 since 1915.

The Master: After this 601 is charged off?

Mr. Clark: Yes, at the end of 1918.

Mr. Ransom: Not at the end of eight months of 1919?

Mr. Clark: There is a balance at the end of 1918, and on the basis of this three cent charge. I think it is perfectly patent that if they are going to set up a charge it should be on a series of years and not on the 46760
basis of a year. That is the reason for the rule in the Uniform System of Accounts, and the reason they have set up that three cents. In the old case they tried to set up ten cents, and, of course, the Court would not allow it.

Mr. Ransom: The principle is the same. If a reserve is controlling, it is controlling both ways. If the ten cent rule is filed, and that rule stands under the Commission's Uniform System of Accounts, that would not be in any different status than a three cent rule. The Court held in the prior case that the reserve was not controlling; it was the actual figure, when ascertained.

46761

Mr. Clark: But when they set up three cents they are bound by it.

Mr. Ransom: Oh, not any more than you are bound by the rules of taxes. As your gas is sold you set up three cents per thousand cubic feet of gas sold over the year. Then at the end of the year you charge against that the ascertained amount. As your Honor perhaps has noticed in our figures for eight months of 1919, we have put in our exhibit the three cent figure, although the actual figure for 1919, is very much more.

46762 Mr. Clark: But don't you see, if your Honor please, that the increased price of materials has nothing to do with withdrawals in this account, because they are withdrawn as of their book value, as of the cost in the old days.

The Master: Is this an item other than and different from ordinary renewals and replacements?

Mr. Ransom: It is renewals and replacements, but the cost of replacing, of course, varies with the cost of the labor and the materials which enter into the thing which is brought into being to take the place of what is retired. Of course, the situation in the past few
46763 years has been this: There was a time when there was perhaps a little tendency to hold back on renewals and replacements; such things as have been done have cost of course more, in the way of replacements, because of the added cost of materials, and especially the higher cost of labor.

Mr. Clark: But the reason for having this rule is the fact that these things are delayed from time to time, and in one year you may have to retire and replace an entire plant and in the next year you may not have to renew or replace anything. That is the reason for the rule, and it is the reason the Commission sets this up and gets their expert's opinion on what it
46764 is necessary to set up. They set up this three cents and they have not seen fit to change it throughout the years. They have not changed it yet, and it seems to me they are bound by it as their expert opinion as to what it costs.

Mr. Ransom: But there is not a shred of evidence in this case that this company can care for renewals and replacements, under the conditions of the last five years, for three cents.

The Master: All right, Mr. Chambers, go ahead.

Mr. Chambers: Now, take Schedule 1, that sched-

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nic I challenge, and I call your attention to the item Municipal Lighting at 75 cents, as to which the witness Teele says he found that the company sold for municipal lighting 117,450,600 cubic feet of gas to the City of New York at 75 cents.

My point in regard to that in this case is they have not made the City a party, and they should have, and, in the second place, not having made the City a party, they were bound to offer you some testimony showing what part of their gas plant was used in making gas for the City at 75 cents. All of that should be eliminated entirely from the case. To go and stick in here 117,000,000 cubic feet of gas sold, at 75 cents, about 46766
which they make no question, and mix it up with the rest of the gas sold at 80 cents, and then claim that it cost them a certain amount to make gas, is too far-fetched for me to understand.

I think it should have been eliminated and, therefore, having been mixed up with the other, I do not see how your Honor is going to say or how you are going to deal with that particular amount of gas. They do not say how much it cost them to make it; of course, it has to be eliminated. The City was not a party and you cannot consider it one way or the other, nor can you consider the part of the plant that was 46767
used in making that amount of gas.

Mr. Ransom: The Supreme Court passed on that very explicitly.

The Master: Do not answer him.

Mr. Chambers: Well, they will pass on it again.

Mr. Ransom: Less than one per cent of the amount of gas sold.

Mr. Chambers: I challenge all of these schedules, but I would like to point out here one or two things. You take these jointly used facilities, there was no competent testimony offered in the case upon which I

46768 say you could make a finding that these jointly used facilities, or that the charges made for these facilities, were proper and reasonable and just. In fact, it did appear that the Central Union and—well, I will take the Central Union, the Central Union are using some mains up in the Bronx, if you will remember, for which a charge is made, and the charge to that company was made on some kind of a fancy agreement made way back in 1909 or 1910. One of the witnesses went on the stand and under cross-examination he said—and I think it was Mr. Woods; it was Mr. Woods—Mr. Woods said, and I can give you the
46769 folio, in regard to those jointly used facilities, those mains, there ought to be a readjustment, that those companies up there were not paying what was fair today, and that he presumed a readjustment would be made. Now, they did not offer any testimony at all about any readjustment.

Mr. Ransom: Where is the folio reference on that?

Mr. Chambers: Yes, I will try to find it for you.

Mr. Ransom: Inasmuch as Mr. Woods did not testify on the subject, it would be interesting to have you find it.

Mr. O'Brien: Well, you search the dusty shelves
46770 of your memory and you will find it.

Mr. Chambers: Just a minute, and I will try to find it for him. I may be mistaken as to whether it was Mr. Mrich or Mr. Woods, but I think it was Mr. Woods. All right, I find it, folio 14277—14271 and 14272. Now, let us get it, and I will quote it. I want to quote that here to show you that they are charging these other companies the same rental today that they charged them ten years ago.

Mr. Ransom: That is admitted.

Mr. Chambers: Then mains, the rental of mains, has not gone up in ten years.

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Mr. Ransom: Where did Mr. Woods testify that there was any—

Mr. Chambers: I am going to quote it in a minute now, when I get my quote; then there cannot be any dispute about it, if I quote it exactly as it is printed in the record.

Mr. Ransom: I find I am in error on a statement that I made a few moments ago, that with respect to large mains in the Bronx it was still the same as ten years ago. They have been changed—they were changed, the large mains, in 1915 and 1919; the small mains concerning which Mr. Brundage testified, involving about $374 a month, have not been changed 46772
since 1910. The one as to which Mr. Woods testified, the large mains, 36 and 46-inch connections, have been changed twice in that period.

The Master: Have you got Exhibit 364 before you?

Mr. Ransom: Yes, right here.

The Master: Do I read that right, to the effect that it costs your company to make its water gas in 21st Street and 99th Street, 1918, 42.66 cents per thousand cubic feet?

Mr. Ransom: Outside of the item of gas storage at works, which is shown farther down, in the sum of $181,033.62—aside from that, which according to the 46773
classification in Exhibit 205 and under the Uniform System of Accounts would be included in reaching the net cost of water gas, in 1918, this figure of 42.66 cents per thousand cubic feet made is correct.

Mr. Chambers: Now, may I read?

The Master: No, I am getting on something that I think is more important.

Mr. O'Brien: But, your Honor, this record will look like a—

The Master: Well, that is the fault of your gentle-

46774 ...ers for the defense: I have been trying to get it ... something useful for you and now I am going to get it it. Does that compare with this charge of the New Amsterdam of 46 cents—46.14? That is 41.94 plus ten per cent?

Mr. Ransom: 42.66 plus the item of gas storage at works, which I think roughly brings it to something like 45 cents, would be the figure comparable with the New Amsterdam.

The Master: No, are you not mistaken about that? Isn't that 42.66 the same as the New Amsterdam's 41.94?

46775 Mr. Ransom: Yes, 42.66 compares with the 41.94 of the New Amsterdam.

The Master: What I am trying to get clear in my mind is this, and this is what I want to know—

Mr. Ransom: Well, I want to make that clear; I am now informed about it. Under the agency agreement that 41.94 does not include miscellaneous works expense and station distribution, and the 42.66 does include miscellaneous works expense and does include station distribution.

The Master: Where is the station distribution item?

Mr. Ransom: Those things are in Exhibit 205. There is miscellaneous works expense shown on Ex-

46776 hibit 364 as .0132 and then this item of gas storage at works and distributing holders, on Exhibit 364, includes as part of that sum of $181,033.62 for gas storage at works and distributing holders the distribution expense at the works.

The Master: This is what I have been trying to get in my mind, and I would like to get it clear. In order to make water gas you have certain items here, generator coal and coke.

Mr. Ransom: Yes.

The Master: Boiler fuel.

Mr. Ransom: Yes.

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The Master: Labor, cartage, and so forth, and handling. That gives you the total for water gas fuel of 16 cents.

Mr. Ransom: Yes, that is on the basis of the 1918 unit prices.

The Master: Yes.

Mr. Ransom: That is, you take the unit prices which Mr. Woods used in his figures for coal and water gas and apply them to the 1918 quantities shown in Exhibit 364 and you get approximately the same figures that are shown in the Woods Exhibits 353 and 354 for identification.

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The Master: This is what is in my mind: What does 41.94—or starting at the beginning what does 43.70 of the New York Mutual represent, what items?

Mr. Ransom: The 43.70 of the New York Mutual represents everything in the case of the Consolidated shown on Exhibit 364 down through repair labor and repair materials. It does not include miscellaneous works expense, which in 1918 for the Consolidated was .0132.

Mr. O'Brien: Where is the proof of that, Judge Ransom?

Mr. Ransom: That is under the agency agreement.

Mr. Clark: That is not in evidence; the agency agreements are not in evidence.

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Mr. Ransom: They are in evidence, of course.

Mr. Clark: What is the number?

Mr. Ransom: I can give it to you in a moment. In fact, my recollection is they are defendants' exhibits.

Mr. O'Brien: I do not think so. They were in court.

The Master: As I read this Exhibit 346, those items down to and including repair materials show your cost to be 42.06 for those items.

Mr. Ransom: You are referring now to Exhibit 364.

46780 The Master: Yes.

Mr. Ransom: And eliminating—

The Master: Miscellaneous works expense. I am taking the items down to and including repair material and I have added to the amount there—do you see that total labor and material?

Mr. Ransom: Yes.

The Master: I have added 98 100 for repair labor and 84 100 for repair material, and that gives me 4200, doesn't it?

Mr. Ransom: I assume that would be correct, yes.

The Master: Those are the items that correspond
46781 with 43.70 for the New York Mutual? Is that correct?

Mr. Ransom: Yes.

The Master: And that corresponds to the 41.94 of the New Amsterdam.

Mr. Ransom: That is correct.

The Master: It does not correspond at all with the 62.21 of the Astoria? The Astoria has other items?

Mr. Ransom: Well, the Astoria items for 1918—Exhibit 485 as to Astoria shows miscellaneous works expenses, coal gas, .0252, gas storage—

The Master: I am talking about water gas now; I am keeping away from coal gas. What I am trying
46782 to see is what difference there is between the different companies.

Mr. Ransom: Astoria in 1918, the miscellaneous expense was .0098 and gas storage was .0004, and the net water gas made after the undistributed adjustments and the loss in volume charged to the United States Government was 38.94.

The Master: 38.94?

Mr. Ransom: Yes.

The Master: For Astoria?

Mr. Ransom: Astoria water gas.

The Master: In other words, then, see if I have this

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right here. At Astoria you made water gas at 38.94, at New Amsterdam at 41.94, New York Mutual 43.70 and Consolidated two plants 42.06, for the same items; is that right.

Mr. Ransom: That is eliminating the items which you have eliminated in each case.

The Master: For the same items, I am talking about the same group, I get that range of figures—38.94, 41.94, 43.70 and 42.06.

Mr. Ransom: That is, eliminating the miscellaneous works expense, loss in volume, station storage and the undistributed adjustments, the net figures are in each of those instances as you have them—for 46784
1918, on the basis of the unit costs as they were at that time.

The Master: In addition to the 41.94 for the New Amsterdam, there is no charge made for insurance or works expense or storage charges, or taxes or anything else, except that ten per cent?

Mr. Ransom: That is correct. In the case of the companies with whom there is a transfer of gas—

The Master: In other words, as to the New York Mutual and New Amsterdam, I have a cost plus 10 basis?

Mr. Ransom: You have a cost plus 10.

The Master: The higher the cost the greater the 46785
profit to those companies?

Mr. Ransom: Well, you have a situation under which the Consolidated is in the rare position of purchasing something from a vendor whose books of account the Consolidated is able to audit and check carefully, to see that they are not being overcharged.

The Master: No, but what is bothering me with reference to that exchange of gas is what I consider a real vice, namely, the cost-plus system. That is the secret of the profiteering that is going on. Take the clothing manufacturer who sold a million dollars'

46786 worth of clothing five years ago on a 10% profit basis; he will be very much offended when you tell him he is profiteering today; he will say he is making the same 10%. But the same clothing sells for 200% more and therefore he is making twice as much as he did five years ago.

What I am getting at is this: A cost-plus-10 basis five years ago might be very unfair today. The New Amsterdam and the Mutual, we will say, got this cost of their material and labor plus 10%, which was figured to cover the overhead—I suppose taxes, insurance and the like. Now, I do not know whether those

46787 taxes, insurance and the like have gone up or not.

Mr. Ransom: Well, the proof shows it.

The Master: Where does the proof show it?

Mr. Ransom: We put in by the testimony of Mr. Carter the items of taxes, included those different companies, the amount of taxes that were paid by each of those companies and the quantity of property used in the service of the Consolidated consumers.

The Master: Is that exhibit in evidence that you have in your hand?

Mr. Ransom: It was brought together in Complainant's Exhibit No. 500.

The Master: As a summary.

46788 Mr. Ransom: As a summary. The different items of the taxes are shown by Mr. Carter's testimony and are also shown in the transferred gas vouchers rendered by the respective companies selling gas to the Consolidated.

Mr. Clark: Is that for all the companies, Judge?

Mr. Ransom: Mr. Carter's testimony showed the different items of taxes—the Consolidated, New York Mutual, Standard, East River and the Astoria, insofar as they related to the portion of the equipment used in the service of Consolidated consumers.

So far as this ten per cent business is concerned,

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isn't this the situation: Here is the New Amsterdam making a large quantity of gas for its consumers and for the Central Union and the Northern Union in the Bronx; the quantity of gas that it sells to the Consolidated is a very small part of the total amount manufactured; the cost which it charges to the Consolidated is not any specially made up cost for the purpose of billing the Consolidated, the cost is the cost of all the gas it makes.

The ten per cent is figured on that cost. If the arrangement was different, instead of a 10% basis there would be the matter of overhead, the matter of taxes. Overheads have gone up in recent years, gone 46790
up very largely. It does not seem to me that there is any element of opportunity for profiteering, because the very things which these companies, the New Amsterdam and the Standard and the Mutual, are covering by this percentage, are the type of things which have very largely increased in recent years.

Think of how much the tax rate of the City of New York has increased, both in Manhattan and in Qu. It has increased from—not quite 100% in ten years. The 10% added in 1918 on all of the gas bought by the Consolidated from these companies, according to Defendants' Exhibit AA-404 which I have before me, amounted to $71,000. Now, far from that being a 46791
profiteering basis, it would seem that it was, under conditions that have taken place in this City and in this country in recent years, a basis exceedingly advantageous to the Consolidated.

The Master: In addition to the 42.06 I have got to add miscellaneous works expense that you carry as 1.32, do I not?

Mr. Ransom: What is that? Yes, yes.

The Master: Then I have got this gas storage at works and distributing holders. That is not carried out into a unit per thousand cubic feet.

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Mr. Clark. You do not take all of that, either, I think.

The Master. What is that?

Mr. Clark. You do not take all of that, either, I think.

The Master. All of what?

Mr. Clark. That gas storage. They do not claim to have to take all of that in.

Mr. Ransom. The reason is that that covers all kinds of gas; that is it covers not merely gas manufactured by the Consolidated at its own plant, but it covers purchased gas.

46793 The Master. In addition to gas storage, miscellaneous works expense, I have got some renewals and replacements at the works, have I not?

Mr. Ransom. Yes.

The Master. Is that figured at 3 cents, or 3 and a fraction, or for the entire system?

Mr. Clark. It is only figured for the entire system, or for the entire Consolidated Gas Company.

The Master. Then production and distribution?

Mr. Ransom. Both production and distribution.

The Master. Isn't the distribution end of it the smallest part of that? Isn't the largest part in the manufacturing?

46794 Mr. Clark. In the manufacturing?

The Master. Yes. In other words, if I take 3 cents here, won't I surely be conservative? It seems so to me.

Mr. Clark. Three cents of what?

The Master. Per thousand cubic feet, for renewals and replacements.

Mr. Clark. Well, no, that would cover the whole works, distribution and production both. 3 cents per thousand cubic feet. It is the same number of thousand cubic feet.

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The Master: Well, it is only a small part of that which relates to distribution.

Mr. Clark: I would not say that.

Mr. Ransom: If your Honor distinguishes between meters, repairs and renewals and replacements.

The Master: Yes, repairs are included in this.

Mr. Ransom: Exhibits 305 and 364 both show the repair items.

The Master: Repair materials and labor are both included.

Mr. Clark: Yes.

The Master: This is what I am trying to get at, Judge. I do not like these cost plus schemes. Now, on 46796
the basis of 10 per cent plus there was about—there was less than five cents added to the cost of the New Amsterdam gas, for instance, 11.94, the difference between 11.94 and 16.14. That 5 cents approximately took care of certain items, miscellaneous works expense, gas storage, taxes, insurance, overhead of all kinds. Now, I was trying to see whether that was a reasonable amount, in the light of the items that it covered.

Mr. Ransom: Just let me show you and call your attention to one thing. That 10 per cent, for example, covers taxes.

The Master: Yes. 46797

Mr. Ransom: The total 10 per cent additions in 1918 were $71,000. I have not the figures before me as to what the 10 per cent amounted to for 1919, but I assume it is not very much different. For the year ending October 31st, 1919, the taxes alone, on the proportion of the Mutual plant devoted to the Consolidated service, amounted to $78,000; on the Standard—well, that is only on the mains.

Mr. O'Brien: Well, where is that in evidence?

Mr. Ransom: That was put in by Mr. Carter.

Mr. Clark: I do not think we are interested in that.

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Mr. O'Brien: The agency agreements are not in evidence, your Honor.

Mr. Clark (continuing): The taxes used for the other plants.

The Master: Are the agency agreements not in evidence?

Mr. O'Brien: Not in evidence.

The Master: Is that so?

Mr. O'Brien: Yes.

Mr. Chambers: Yes, that is so; they are not in evidence.

Mr. Clark: They are not.

46799 Mr. Ransom: Mr. O'Brien proved them under cross-examination.

Mr. O'Brien: We did not prove them at all. You build your case up out of the complainant's testimony.

The Master: How about this additional charge for the New York Mutual, that part of the plant facilities, where is there any difference between the New York Mutual and the New Amsterdam in that respect?

Mr. O'Brien: That is a little bonus, just a little for good will, your Honor.

Mr. Chambers: Was I through?

The Master: I couldn't get anything interesting from you, so I am trying to get at something myself.

46800 Mr. Chambers: I was not through.

Mr. Ransom: As to this 10 per cent, the total 10 per cent paid amounts to only four-tenths of a cent.

The Master: That is not the point.

Mr. O'Brien: Let us stick to the agency agreement and clear that up. They are not in evidence, and I stand on that proposition.

Mr. Ransom: I will find that in a moment. It is four-tenths of a cent, covering the various things that are there covered.

The Master: Not four-tenths of a cent, four cents.

Mr. Ransom: No, four-tenths of a cent.

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The Master: 10 per cent of 40 cents?

Mr. Ransom: On the gas sold by the Consolidated.

The Master: Oh, I see.

Mr. Clark: In connection with that charge of the New York Mutual, you will notice on this exhibit that 1918 was the first year they ever charged that.

The Master: I noticed that three months ago.

Mr. Ransom: If you care to hear anything orally on the question of the difference between the situation as to the Mutual and the situation as to the New Amsterdam, that of course is set forth in considerable detail in the so-called Woods report which was spread fully on the record.

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The Master: I want to hear you on it, for this reason. I know Mr. Woods' report, I know all about that, but how can I as a matter of law, arriving at the cost of producing gas—it costs it 42.06 for certain items, it costs them 43.70 for certain items, and costs the other company 41.94. So far as the New Amsterdam is concerned, you get all the gas you need from them at cost plus 10 per cent. You are paying the New York Mutual a little more, 43.70 plus 10 per cent. How can I as a matter of law allow an additional charge to the New York Mutual upon the theory of having a percentage of the plant requirements for your own use?

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Mr. Ransom: Just this way: The Consolidated Gas Company as it has stood the last few years has not enough plant capacity to meet the requirements of its consumers. The Mutual Company up to the abnormal developments, the remarkable increase in the demand upon all of the companies during this past winter, the Mutual Company up to that time had a plant reserve, that is, it had an excess of manufacturing capacity over and above what it needed for its own consumers. The New Amsterdam Company had and has no plant capacity which it could devote to the manu-

46804 facture of gas for the Consolidated Company. Such margin of plant capacity as the New Amsterdam Company has over and above its requirements is, under the arrangement devoted to the manufacture of gas for the Central and Northern Union.

The Mutual situation is this: There is a margin of Mutual plant which they are able to devote to the manufacture of gas for the Consolidated. The Consolidated has to have the gas, the Consolidated has not the plant itself. The Mutual to that extent does not need the manufacturing plant which it now has. As a result of that, as has been shown in the proof in this
46805 case, you can figure it anyway you want, several ways have been shown, there is about $2,000,000 of the Mutual's plant investment which is used in the manufacture of gas for the Consolidated Company.

The Master: Yes, but there is a percentage of the New Amsterdam capacity in the same way that is used for the Consolidated Company.

Mr. Ransom: Not as a regular thing. They get a little gas from the New Amsterdam.

The Master: For every foot of gas they get from the New Amsterdam they are taking a proportionate part of the plant capacity.

Mr. Ransom: If you will look at page 14,511 of
46806 the printed record, you will see shown there the situation, that the New Amsterdam has for the use of other companies 15,243,000 cubic feet of capacity. The Mutual has 137,193,000 cubic feet. Those are the only two that have an excess of capacity. Now, the New Amsterdam capacity is required by the Central Union and Northern Union, that is, the Central Union and Northern Union Companies require in excess of their own plant capacity 15,837,000 cubic feet which is almost exactly the excess of capacity which the New Amsterdam has. Consequently they pay the New Amsterdam for that.

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The Mutual has excess capacity amounting to 13,719,000 cubic feet, and the Consolidated and Astoria lack 10,686,000 cubic feet of capacity. Consequently they obtain from the Mutual to use of 10,686,000 cubic feet of capacity.

The Mutual in its rate case would not be entitled to a return upon that investment. The Consolidated if it owned another 10,000,000 plant would be entitled to a return on that investment. The situation as to this Mutual plant is that year in and year out up to this time—it cannot be for the future, as Mr. Addicks pointed out—but the Mutual has 10,686,000 cubic feet of its capacity, or a little over $2,000,000 of its investment, that has been for a number of years devoted to manufacturing gas for the Consolidated, just as much as though that 10,000,000 cubic feet of capacity were in a separate additional plant owned by the Consolidated.

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Now, the fact that in the transfer system at a given time, in a given year there is a certain minor number of cubic feet of gas received by the Consolidated from the New Amsterdam and paid for, with the corresponding readjustment that that brings, does not put the New Amsterdam, as I see it, in the same situation as the Mutual. The New Amsterdam is under no obligation to devote any part of its plant to the manufacture of gas for the Consolidated, it hasn't any capacity that it could devote as a regular thing, there is nothing that the Consolidated could rely on as a matter of maintaining the requirements of its consumers, in the New Amsterdam situation, because the New Amsterdam situation is met, its capacity is fully pre-empted by its requirements and those of the East River and the Central and Northern Union Companies.

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The Master: Do counsel for any of the defendants want to present anything else to me?

Mr. Clark: Yes, I would like to say something on

46810 that. It shows plainly here that the New Amsterdam has furnished nearly as much gas to the Consolidated as the New York Mutual throughout the year, half a billion cubic feet in 1917, the same in 1918, about 300,000,000 cubic feet in 1916, a smaller amount in 1915. Going back before 1913, we find them furnishing a billion cubic feet and over per year. The New York Mutual also has kept on furnishing from a quarter of a billion to a billion cubic feet.

The Master: Major Clark, of course this is so—the Consolidated Gas Company can either make or buy its gas, it does not make any difference to the public so
46811 long as the public does not pay any more than the actual bottom price for the gas; and it does not make much difference to the consumer as to how that is figured so long as the price is right. The first question to be determined is, what is the fair price, what is the fair cost of producing gas in 1918. My present judgment is that for the purposes of analysis and comparison, past and future, in arriving at a conclusion, the fact as to what the situation is, I think I am going to take 1918, looking back and looking forward into 1919, so far as the record shows, as to just what it is. However, that is a little beside what I am saying. Here is the situation: The Consolidated has these two
46812 water gas plants, one at 99th Street and one at 21st Street, and it has the water gas plant at Astoria. In 1918 it would seem that for this group of items to which I have been referring, excluding miscellaneous works expense and storage at the works, the cost of gas to them in New York was 42.06. It cost them at Astoria 38.94, so that it would appear that it cost them considerably less at Astoria, for some reason or other, to make gas than it did at 21st Street and 99th Street. Although a Gas Company is required to keep its plant up to fair efficiency it cannot be compelled to keep each plant up to equal facility. That could not be

done in the nature of things in operating two or three different plants. So I suppose somewhere between 38.94 and 42.06 is a fair average price for producing gas in 1918, including the items referred to. 46813

Mr. Ransom. May I mention this: When you have made gas in Astoria you have got to get it to Manhattan, and you cannot leave out of consideration the transportation cost.

The Master: The cost of landing it on Manhattan Island.

Mr. Ransom: Yes.

Mr. Clark: Why is there any greater cost of landing it on the dock at Manhattan than at Astoria? 46814

The Master: No, what Judge Ransom has said—and I have had it in mind, but it had escaped me for a minute—is that this 42.06, the cost of making gas on Manhattan Island is the cost of gas on Manhattan Island, it is here on the Island. 38.94 is the cost over in Astoria of gas that has got to be gotten to Manhattan Island.

Mr. Ransom: May I call your attention to one further thing, and that is that in 1918, for example, let us say, the factors which reflect themselves a little more gradually at Astoria with its larger storage facilities. Some of these materials used cost a little less at Astoria on the average, that is, the price for a year.

The Master: For the purpose of what I was about to say, I take this 42.06 that it cost to make gas on Manhattan Island. 46815

Mr. Clark: I think you are exaggerating the cost of shooting the gas under the river.

The Master: I will disregard that for the moment, for the purpose I have in mind it is not important. Let us assume that the books show that the various items included in this total of 42.06 were actually expended and reasonably so, so that it cost them 42.06

46816 to make gas on Manhattan Island. Now, really the public is not concerned very much as to whether any company makes gas cheaper or dearer than that so long as the same items do not cost more than 42.06. Isn't that so?

Mr. Clark: I think that is correct.

The Master: To that 42.06, however, must be added taxes and the expense of operating the plant. Otherwise you will not get the right result as to the cost of gas on the whole, will you?

Mr. Clark: I think they are bound by what they actually paid. I don't think you can add to that.

46817 The Master: I won't, but if what they paid is less than the record shows they could make it for themselves, am I at all concerned as to just what it cost the other companies to make it? Doesn't that on its face indicate a fair price?

Mr. Clark: I think the assumptions you have made, assuming that they have proved how much gas they got from these companies, I think it is a proper conclusion.

The Master: I have been very much puzzled about this exchange of gas situation, and my mind has been running in the manner that I have just indicated, and that is that if I find that the price they paid to the

46818 New Amsterdam, and the Astoria, and the Mutual, excluding or including this plant facility item, it doesn't make any difference, is less than they could really make it for themselves if they put up their own plant on Manhattan Island, I don't think the consumer is at all interested, he is not being overcharged.

Mr. Clark: I agree with you if you assume that they actually got the gas, but they have not proved that.

Mr. Ransom: Haven't you lost sight of the fact that here is a little over two million dollars of plant devoted to the making of gas for the Consolidated Company by the Mutual Company?

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The Master: Unless I can work it out in your favor on the theory that I have indicated I am against you.

Mr. Ransom: Who is going to pay a return on that investment?

The Master: I don't know, and I don't care.

Mr. O'Brien: There is no proof as to what proportion of the Mutual plant is worth two million dollars.

The Master: I am going to work it out so that your payment to the Mutual, including that plant facility payment, will be justified, but if I cannot do that, having in mind that you have to allow for overhead, for interest on investment, and other charges, then I am against you. 46820

Mr. Ransom: You ought to be.

Mr. O'Brien: Right on that point, and I want to emphasize it, Mr. Ransom seems to try to avoid it, the agency agreements are not in evidence, the books of the Mutual Company are not in evidence, for all we know they might have made gas even cheaper.

The Master: Yes, they might have made it for 4 cents a thousand cubic feet, but I don't care about it, and it does not interest the public.

Mr. O'Brien: If you will go into Mr. Woods' testimony you will find how studiously he avoided the manufacturing results and the cost of operation at 99th Street and 21st Street. When he was cross-examined on this hypothetical figure he was asked whether he had gotten the records of the 99th Street and the 21st Street stations and he said no, and he offered no excuse why he had not. These things are illuminating, but the question of all these inter-company operations that you have gone into serves all the more graphically to indicate that you cannot try this case, and the Court will hold that you cannot try this case, without bringing in all of the companies and having all of the properties— 46821

46822

The Master: That is rot.

Mr. O'Brien: I did not expect it was going to get over with the Master.

The Master: Well, you said it fourteen times.

Mr. O'Brien: It only serves to bring out all the more strongly that pretty nearly everything I have said has been considered rot by the Master.

The Master: No, I think some of the stuff you have put in has been most useful. I think Mr. Little's testimony, and Mr. Sangster's testimony have been the most useful pieces of testimony in this case.

Mr. O'Brien: Right on that point, you want to un-
46823 derstand in regard to certain things set forth in the Little estimate that he always made it a point to understate a proposition. I think you will agree to that.

The Master: Little as an expert impressed me as being a square, fair witness. When he was confronted with a square question as to whether he meant something he was honest in his statement. He was testifying in your behalf, he was working out a theory for you, it was a very interesting theory, and when you got all through he was asked whether he would advise the Gas Company to follow it, and he said no.

Mr. O'Brien: That is not correct. You do not give
46824 the statement of Mr. Little on that. The proposition put up to him was as to the present time, whether he would advise the expending of fifteen million dollars.

The Master: I am talking about the present time.

Mr. O'Brien: And as to that, the advisability of spending a large sum of money, I want to call your Honor's attention to the remark you made when the proposition was first presented that they ought to adopt in the face of the rising price of oil the coke oven plant that has been adopted by many other gas companies. You seemed to rebel at that, you seemed to resent the idea at once, and you came forward with

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a proposal that it was absurd to think that this company would be required to scrap its plants and take up this new idea by the expenditure of a large amount of money, and yet before the case is closed we have them coming in and admitting that they are going to spend upwards of five million dollars to make some additions to the plant, even under the high prices at the present time. When that question was put on cross-examination—it was not cross-examination but a direct question to Mr. Little, the question comprehended the present time. Mr. Little clearly expressed his view as to what they should have done in the past in making preparations for the situation that confronts the company today, and that did not apply to the chamber oven plant at that.

46826

So, to get back to what I started with, there isn't any proof here as to the cost of operation at 99th Street and 21st Street. They did not bring in the manufacturing books, the underlying data, to tell your Honor what it cost the Astoria, and you are dealing with facts that are only calculations made from the general books of account when you are talking about costs at Astoria.

The Master: You have helped me out there.

Mr. O'Brien: I have not helped you out at all.

The Master: Yes, you have. You brought in all the books of the Astoria Company. When the complainant closed its case I was confronted with the situation of figuring that they would not be entitled to get from Astoria more than I could figure it cost them to make gas on Manhattan Island. I would have been absolutely in the dark as to the investment at Astoria, as to the cost of operations, as to the results of operations, if you had not been good enough to put those books in.

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Mr. O'Brien: Your Honor, there is no proof in this case as to the investment at Astoria.

46828 The Master: I think there is.

Mr. O'Brien: The books of account offered under the limitations under which they were presented by the defendants do not carry any more weight with them than the books of account offered while Mr. Teele was on the stand.

The Master: I am not so sure about that.

Mr. O'Brien: The fact is that Teele never got down to the underlying data, Mr. Sangster did not do it, as was expressly put upon the record, and you have not, and you don't know today what the actual cost is of making gas at Astoria.

46829 Then, to get down to the question of the 12 per cent that is paid in connection with the tunnels, entirely inadequate proof upon those subjects has been put in. The $500,000 which is included in the cost of gas sold by the Astoria Company to the Consolidated Company—that is entirly unexplained. There is no adequate proof upon that subject, and one of the most glaring errors committed by your Honor at the eleventh hour of this case, over our strenuous objection, was to take the tables of Mr. Woods.

The Master: I think you do not quite understand what I am here for. I am not here to be told what my errors have been, I am trying to find out the facts

46830 so that I shall not make any more errors before I get through.

Mr. O'Brien: I had my own ideas of what you have been here for, yesterday and today. I expressed it yesterday, and I think you know what is in my mind. I have an idea what you are here for, and before we conclude I am going to tell you just what I am going to tell the District Court and a few other courts about you. It was politely put yesterday in one of the motions to dismiss, it was put in mild language, but we will have the real language before we leave this tribunal, and without my being contempt of court.

46831

The Master: I have got to go to Washington tonight, and I will be there two days. I have a case to try on Friday that I cannot postpone, so I will have to adjourn further discussion until Monday morning of next week.

Mr. O'Brien: Can we indulge the hope for the rest of the week that sometime we are going to have a chance, without Ransom testifying and the Master heckling us on these things?

The Master: I am going to heckle you to the end of this case, and you might as well understand that now.

Mr. O'Brien: Piling up Pelion on Ossa, as they used to say in the classical writings. 46832

The Master: I am going to heckle all counsel here until I find out what I want.

Mr. O'Brien: I did not see you heckling Ransom very much. Mr. Chambers started, and he had the floor at the beginning of the afternoon session, and he was shut off.

The Master: He was wasting time, and I had things in mind that I wanted to find out.

Mr. O'Brien: He made a statement which he was willing to prove, he sent for the book to prove it, in reference to Woods' testimony on jointly used facilities.

The Master: He will have plenty of time to talk next week. 46833

Mr. Chambers: Perhaps I will have my say later in some other court.

The Master: If anybody wants to prepare any memorandum or brief, or whatever you call it, you can prepare it and submit it on Monday.

Mr. Ransom: Is it to be submitted on Monday or later?

The Master: I am going to finish it up on Monday if I can, if not, I will go on Tuesday.

Mr. O'Brien: I want to ask you as man to man,

46834 after finishing up a case that took seven or eight months to try going on in the latter part of it from 9:30 to 6, with all the essential work necessary to prepare for each day's work, if you could expect us to be prepared to sum up, and make all the other motions, in two weeks?

The Master: Yes, in two days.

Mr. O'Brien: If you do, I don't think anybody else will agree with you on that.

The Master: I could do it in any case I ever tried.

Mr. O'Brien: Yes, and you said you could go over in an afternoon and settle this thing with Lewis Nixon
46835 and a couple of engineers, and you said you didn't want any briefs.

The Master: I don't want any.

Mr. O'Brien: Well, that makes the record complete, and it has been consistent, so far as the Master is concerned.

The Master: I can try a case that takes six weeks or six months, and when I get through with it I know what I have proved, and what I claim to have proved.

Adjourned to Monday, March 29, 1920, at 9:30 A. M.

46836

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 46837

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, March 29, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 46838
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Clark: I have a memorandum here, if the Master please (handing paper).

The Master: I will just get some stuff from Judge Ransom that won't affect the situation. I just want to get a couple of facts clear in my mind. I want to get this octopus of Mr. O'Brien's right in my mind. The Consolidated Gas owns all the stock of the Astoria Light, Heat & Power Company, doesn't it? 46839

Mr. Ransom: I believe so.

Mr. Carter: Yes, sir.

The Master: Now, what percentage of the New Amsterdam?

Mr. Carter: Ninety-nine and a fraction; a large fraction of over 99, practically all.

Mr. Ransom: That is all in the Public Service Commission report.

46840 The Master: Well, I don't want to have all of those things on my desk, because these facts are without dispute, and I can get them. Now, what of the Standard?

Mr. Carter: About 95 per cent.

The Master: Of the Mutual?

Mr. Carter: About 50 per cent, the Central and Northern Union—

The Master: Well, you don't buy gas from them?

Mr. Carter: No, but there are such companies as New Amsterdam, which owns them outright.

The Master: The New Amsterdam owns the East
46841 River, doesn't it, owns all of the East River?

Mr. Carter: Yes, all of it.

The Master: And all of the Central Union?

Mr. Carter: All of the Central Union.

The Master: How about the Northern Union?

Mr. Carter: It owns half of the Northern Union, and the Central Union owns the other half, so its ownership is complete of the Northern Union also.

The Master: It owns all of the Northern Union?

Mr. Carter: Yes, sir.

The Master: The East River owns both tunnel mains?

Mr. Carter: Both tunnel mains, both tunnels.

46842 The Master: Ravenswood and Astoria?

Mr. Carter: Yes; and the connecting mains in Long Island City.

The Master: Well, I think those are the companies that—

Mr. Ransom (interrupting): You are not interested in the New York & Queens, because it is not on the transfer system.

Mr. Clark: They sell gas to the Westchester Lighting?

The Master: I don't care about that. On Manhattan Island the transfer system is practically the

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Standard, the Mutual, the New Amsterdam and the Consolidated, isn't it? Isn't that right?

Mr. Clark: Doesn't the Central Union sell on Manhattan Island?

Mr. Carter: No, the Central Union does not sell on Manhattan Island.

The Master: That was my recollection of the testimony, that is why I said that. Now, on Exhibit 364 Mr. Teele gives the cost at Astoria, which is included in the sixty odd cents for 1918, as 38 plus. Does that include for mixed coal and water gas the same items that I discussed the other day, which showed Consolidated 42 and the other companies 41 46844
and so on, excluding, my recollection is, works expense?

Mr. Carter: Nothing is excluded in the case of the Astoria Company.

The Master: It includes everything?

Mr. Carter: Everything.

The Master: Except, of course, insurance, taxes and items of that kind.

Mr. Carter: Exactly.

Mr. Ransom: There practically isn't any items that amount to anything for gas storage at Astoria. There was some confusion on the matter of what were the correct figures with respect to the Consolidated and 46845
the New Amsterdam and Mutual and the Astoria, in Tuesday's record. That is at least as the stenographer took it, there are several different versions of apparently the same figures.

The Master: I haven't got Tuesday's record, and I want that. I want these minutes, that is why I am having this taken down.

Mr. Ransom: For example, on page 15873, your Honor stated the Consolidated figure 42.06.

The Master: Yes.

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Mr. Ransom: And at 15875 you stated at 43.06, and 15870 as 42.06.

The Master: 42.06 is the figure I am talking about.

Mr. Carter: Yes, 42.06.

The Master: That 42.06 you told me excluded miscellaneous works expense.

Mr. Ransom: The correct Consolidated figure, if the computations had been made on Saturday, which I undertook to make, was 42.66 less 1.32, making the correct Consolidated figure of 41.34.

The Master: Well, isn't that right?

Mr. Carter: That is the Consolidated less station

46847 expense and distribution.

The Master: That is not altogether correct. That red figure of .0072 is included in the 42.66.

Mr. Carter: That remains in.

The Master: No, Mr. Carter, you take the figure above that, the total material and labor 40.24, and add to that .98 and .84 cents, and I think you will get 42.06, that is the way I figure it.

Mr. Carter: You will. Then you will have to take out that red figure from it.

The Master: Well, I do not reach it.

Mr. Carter: You should reach it, it should be taken into account.

46848 The Master: Oh, it should be taken out anyhow?

Mr. Carter: Exactly.

The Master: Well, what is that figure, 42.66 less 1.32?

Mr. Ransom: 41.34.

The Master: 41.34. That now is everything excluding miscellaneous works expense, is that correct?

Mr. Carter: It is, and gas storage, which is shown below, not in rate per thousand, but in dollars and cents, $181,033.62.

The Master: Well, you told me that 38.94 represented the Astoria figures for the same items with

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water gas. Is that correct? The reason I ask is that Mr. Teele says 38.47 plus taxes is the charge at Astoria, and that is a little different, apparently.

Mr. Ransom: According to Exhibit 485, the total gas manufactured for sale is 38.50.

Mr. Carter: Speaking of water gas alone, your Honor.

The Master: Why, yes. On 364, I want to get clear in my mind what the books of the various companies show was their cost of making water gas, taking the same items that Teele shows on Exhibit 364, down to and excluding miscellaneous works expense. Now, I was told the other day that the item of 46850
43.70, the New York Mutual, corresponds with the 41.34 of the Consolidated and the 41.94 of the New Amsterdam corresponds with 41.94 of the Consolidated, and that of 62.21 of the Astoria charge, 38.94 would correspond with the 41.34.

Mr. Carter: That would not be correct, sir, because the total cost of water gas at Astoria was 40.54 cents.

The Master: Including works expense?

Mr. Carter: Including works expense.

The Master: Well, what is it excluding works expense?

Mr. Carter: Excluding works expense, which is 46851
64 cents, leaves 39.90 cents as the cost at Astoria, corresponding with the figures that you have just read.

The Master: 39.90. Where did you get that?

Mr. Ransom: I give it Exhibit 485, the water gas sheet, cost of gas—the cost of the net water gas made, that is taking out loss in volume charged to United States Government.

The Master: Sheet 6 of Teele's exhibit shows 62.21 represents 38.47 plus taxes and insurance.

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Mr. Ransom: You are going back to Exhibit 364, are you?

The Master: Yes. Now, that 38.64 is mixed coal and water gas, I suppose, is it?

Mr. Ransom: Yes. You are referring to the net on the second sheet of Exhibit 364?

The Master: Right.

Mr. Ransom: That is 38.47?

The Master: Is there any exhibit that you put in evidence that shows me how that is arrived at, and how much of it represents coal gas as distinguished from water gas?

46853 Mr. Ransom: You mean in quantity?

The Master: No. You have given me a water gas figure, excluding works expense, of 39.90, and I would like to see if I can get a coal gas figure.

Mr. Ransom: Exhibit 485, which is the Astoria quantities and costs for the year 1918, the first sheet is coal gas.

The Master: Let's see it, will you?

Mr. Ransom: Yes (handing papers). That shows the quantities.

The Master: The unit prices.

Mr. Ransom: And then on the third sheet the two are brought together to show what the net coal

46854 gas and net water gas is.

The Master: Let me see that.

Mr. Ransom: Yes (handing paper).

The Master: Well, I find it is 35.13. Well, that steam item ought to be excluded then, ought it not? Well, yes, it is excluded.

Mr. Carter: Yes.

The Master: It is 33.97, less miscellaneous works expense and gas storage for coal, isn't it?

Mr. Ransom: Well, there is loss in volume on charge to United States Government.

Mr. Clark: Mr. Woods testified there was about

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6 cents difference between coal and water gas at Astoria in 1918.

The Master: Have you anything on that at all?

Mr. Clark: The Public Service Commission's reports brought out by Mr. Woods on cross-examination. We have put no exhibits in. Mr. Sangster shows 6 cents, too.

The Master: He shows a difference of 6 cents?

Mr. Clark: 6.48, I think it is.

The Master: 39.98 less these two items. Well, I don't know that I have got Exhibit 485 among my exhibits.

Mr. Ransom: I gave it to you the other day, and I will get another copy of it. 46856

The Master: I will check it up. 33.96 as against 39, that would be about 6 cents.

Mr. Ransom: That would be as I have it, with the increase in cost of coal.

The Master: Well, would it run about the same?

Mr. Ransom: No.

Mr. Clark: Oil has gone up faster than coal.

Mr. Ransom: Well, proportionately not.

The Master: I just want to ask one question before I call for anything that counsel wants to say in their own way. Why does it cost more, Judge, to make water gas on Manhattan Island than in Long Island City, for the same items? Why should it? You say that your water gas plant in Manhattan is as good as new, and just as efficient as Long Island City. What bothers me is why does it cost any more or any less at the two plants, substantially? I can understand a fraction of a cent or less than a cent, or something like that, but there is a cent and a half here. 46857

Mr. Ransom: In the first place, there does not seem to be much, if any, difference.

The Master: The difference between 39.90 and 41.34.

46858 Mr. Ransom: Well, let me call your attention to something—

The Master (interrupting): And the New York Mutual is 43.70. Why should there be so wide a variance as between 39.90 and, say, 43.70 of the New York Mutual?

Mr. Ransom: Well, I can call your attention to one difference. For the twelve months ended December 31, 1918, there evidently was a difference in the relative quantities of coal on hand, so that generator coal, the average cost of the generator coal used by the Consolidated during those twelve months was
46859 $6.690 per ton, and at the Astoria during those twelve months it happened to be only $6.186, which in itself would account for the cent and a half difference that there is. Now, there comes slight differences of that sort, due to differences in the condition of stock at the beginning and end of a particular year. That I think would be one of the explanations. And then, of course, there comes a degree of difference according to the situation of different companies and plants with respect to the candle power situation. For example, the Consolidated in 1918 used 4.13 gallons of oil and the Astoria only 4.12.

The Master: If the machines are of equal efficiency,
46860 the candle power result ought to be the same, oughtn't it? There isn't much of a difference there anyhow.

Mr. Ransom: No, there isn't much of a difference in price. I think probably if you carried that through, you would find that the difference in the material stock was—

The Master (interrupting): Was what accounted for it?

Mr. Ransom: Was about the most—the principal cause of difference.

The Master: Let me see if there was anything

46861

else that should be brought out that I have specially in mind that I wanted to ask about.

Mr. Ransom: May I just call your attention to one other thing on that same point?

The Master: Mr. O'Brien, Mr. Little when he testified, gave me a copy of his statement, and then I gave it back to him. I would like to have that copy.

Mr. O'Brien: I will look it up, your Honor.

The Master: Haven't you got it with you?

Mr. O'Brien: I think it is on the way up with my papers. You mean with the blueprint?

The Master: Well, I gave him—yes, a blueprint 46862
copy of it.

Mr. Chambers: It is in the testimony.

The Master: Was it copied in?

Mr. Chambers: Yes.

The Master: Well, I want the volume then that has that in.

Mr. Ransom: I call your attention to the difference in the unit price on generator coal. In 1918 there was also a difference in the unit price on boiler fuel, coal. The unit price for the Astoria for those twelve months happens to be $5.624, and the Astoria $5.827.

The Master: Now, let us see if I have got my 46863
figures right on this. The 21st Street plant, my memorandum here says has a capacity of about 28,000,000 cubic feet a day.

Mr. Carter: 28,500,000.

The Master: Is that the testimony now?

Mr. Carter: 28,500,000.

The Master: And 99th Street, about 5,500,000?

Mr. Carter: Yes, sir.

The Master: 14th Street plant you claim has a capacity of about 5,000,000, isn't it?

Mr. Carter: 5,000,000.

46864 Mr. Ransom: We made over 4,000,000.

The Master: 42nd Street, 4,500,000, is that correct?

Mr. Carter: Yes.

The Master: Units A and B of the Astoria Company have a claimed capacity of 20,000,000, 10,000,000 each, and Unit C, 30,000,000.

Mr. Carter: Yes.

The Master: Making a total of about 50,000,000, is that right?

Mr. Carter: 50,000,000 for Astoria.

Mr. Ransom: Those are on the quantity of oil so
46865 far as received.

The Master: That is what I am talking about.

Mr. Hayward: The Master won't forget in considering that that Mr. Woods reversed what Judge Ransom has just brought out. In his hypothetical plant his costs and quantities and everything for other years, his estimate of what it would take in a theoretical plant over there, are higher, I believe, in every case, practically every case, than these plants that you have been talking about, whose actual figures show higher except in the years when the gas cases were on.

The Master: Well, I saw that. I have that in
46866 mind.

Mr. Hayward: I mean he has not only taken the worst plants they have got, so far as actual operation is concerned, but he has added to that as his theoretical costs in every case.

The Master: Yes.

Mr. Hayward: Coal consumed, you will see here is one plant the average was 3.80 for oil per gallon right straight through the year.

The Master: I am not taking any one thing, Colonel; I am trying to get it all.

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Mr. Hayward: Well, I think that is a fair basis to consider the value of his testimony on.

Mr. Ransom: Well, this is the curious thing, that taking into account particularly for the year 1918, operating results at either Astoria or in the Consolidated, and on the basis of unit prices of material and labor which prevailed in 1918, you take the unit prices as of October, 1919, when Mr. Woods testified, and you would get the 1918 costs at Astoria and the Consolidated almost identical with the costs given in Exhibits 353 and 354. The variance between Woods 353 and 354, what Colonel Hayward erroneously calls hypothetical costs, and the 1918 operating results, is the variance in the unit prices of material.

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The Master: Well, I am not analyzing all those figures.

Mr. Hayward: Why is it erroneous to call it hypothetical figures?

Mr. Ransom: Because there is nothing hypothetical about it, it is a very actual figure.

The Master: Well, now, let me get this. The New Amsterdam Company operates a water gas plant at Ravenswood, doesn't it?

Mr. Ransom: Yes.

46869

The Master: It does not own the stock of the Standard?

Mr. Ransom: No.

The Master: Now, the New York Mutual operates a water gas plant where?

Mr. Carter: On East 11th Street.

The Master: On Manhattan Island?

Mr. Carter: On Manhattan Island.

The Master: And that capacity is what?

Mr. Ransom: 24,000,000. These capacities are given on page 14511 of the record.

The Master: Well, I thought it would take me

46870 less time to get it this way, that is all, than it would to go through the record and get it. Now, the New Amsterdam has a capacity of how much?

Mr. Ransom: 36,000,000.

The Master: There are some of those things that are not in dispute, generally, and I did not want to spend hours looking them up. The Standard has a capacity of how much?

Mr. Ransom: 10,500,000.

The Master: And the New York Mutual how much?

Mr. Ransom: New York Mutual, 24,000,000.

46871 The Master: And these are all water gas, aren't they?

Mr. Ransom: Those are all water gas.

The Master: Every one of them?

Mr. Ransom: Yes. And the Central and Northern Union—the Central is a coal.

The Master: Now, the highest amount of sales of the Consolidated for any one day, prior to October, 1919, was how much?

Mr. Ransom: Prior to October, 1919, was—

Mr. Carter (interrupting): You mean the highest day's output?

The Master: Yes.

46872 Mr. Carter: 88,000,000.

The Master: The highest day's sendout?

Mr. Carter: That was 88,000,000 prior to October, and ninety-nine million nine hundred and some thousand this year.

The Master: And over what—'08, wasn't it?

Mr. Carter: Over 99,000,000.

The Master: Well, I wanted it really since before October.

Mr. Ransom: 99,243,000.

Mr. Clark: They never made as much as that up there.

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The Master: I know that, but what I am trying to do, in preparing a report, is to get my general picture right as to the various interests, and how this branches out, and just what the Consolidated sells as distinguished from the system. In other words, the Consolidated Company is called on by the public to deliver to them a certain amount of gas of twenty-two candle power. The Consolidated Company therefore, must either have the manufacturing capacity or buy that gas. Now, it has on Manhattan Island certain manufacturing capacity, part of which it uses regularly and part of which it does not use regularly. The cost of producing that gas which is 46874
to be sold to the consumer at 80 cents, is the vital consideration or matter for consideration in this whole case, as I have said from the outset. I do not proceed with an examination of invested capital or values or any other thing until I find out what it actually costs the Consolidated Company in 1918 and 1919, to produce the gas required by statute to be delivered to its consumers. Now, taking prior to October, it was bound to make or find approximately 90,000,000 cubic feet a day. That is maximum. And it was bound since then, according to the testimony, to find pretty nearly a hundred million. Now, it did not have all of that manufacturing capacity on Manhattan Is- 46875
land—

Mr. Ransom: But doesn't it have to have reserve also?

The Master: I am not talking about that now, I am talking about the actual cost of making some gas.

Mr. Ransom: The cost of the reserve is part of the cost of making the gas.

The Master: How?

Mr. Ransom: Because you are obliged to have the reserve.

46876 The Master: So far as actual material goes into the manufacture.

Mr. Ransom: Oh, no, not actual material in manufacture.

The Master: Well, that is what I am talking about now, I am talking about this 31.44 excluding works expense, because their figures apparently correspond with it. The Consolidated Company says it costs us 31.34 to make gas, excluding works and storage expense, and we pay other companies for it, and they bought from the Astoria and all the rest of them. Now, what I am trying to get clear in my mind is
46877 what was and what ought to have been, operating a plant economically and efficiently on Manhattan Island, where they have a right to have their plants, the cost of a thousand cubic feet of gas, mixed coal and water gas, and that is what I am trying to get at first, and now this question occurred to me, Judge Ransom, and I might bring that out at this time—

Mr. Hayward (interrupting): Before you leave that, there is one thing I do not think has been brought out, I do not know whether it has been brought out or not, in connection with our contention that the 14th and 42nd Street plants were merely camouflage, carried along for other than legitimate
46878 purposes.

The Master: Well, I don't get that.

Mr. Hayward: There never has been a year—Judge Ransom keeps talking about this reserve, and I think we have pointed out how absurd it is to have the reserve a coal gas plant instead of vice versa, and there never has been a year, so far as I can make out from the figures, when the 14th and 42nd Street plants have been run in the extreme days of 1917 or 1919, when the 14th and 42nd Street plants were needed for the gas that was turned out for this city. In other words, if those two plants had burned down

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five years ago, there never has been any time since, in what they claim unprecedented weather in the gas business in 1917 or 1919, when they needed those plants, in other words when they did not have ample capacity in other places if you include Astoria.

The Master: Well, I do not want to go into the reserve question at this time.

Mr. Ransom: Those people who were not at Palm Beach were kept warm by these plants this winter.

Mr. Hayward: But those of us who were not at Palm Beach were kept warm by 14th and 42nd Streets because Astoria was not kept operating to capacity, 46880
and that is a fact.

The Master: You will save time if you will let me get clear what is in my own mind first. What I want to get clear is this: When one company owns all the stock of another company, Judge Ransom, is it the law today that those two companies have got to be considered separate entities, or is it the law today that their entities are such that one company means the other, and it is one company?

Mr. Ransom: Well, I am unable to answer that question with confidence. In the prior suit this company endeavored to treat the Astoria situation as though it was simply a manufacturing department of 46881
the Consolidated Company. The report of the Master was made up on that basis, and it went into the Circuit Court and the Circuit Court ruled the other way, and therefore it was treated the other way.

Mr. Carter: Why is it the Court allowed six per cent on the investment?

Mr. Clark: You were not making any gas there, Judge.

The Master: No, but I have had occasion to have under consideration the question of the identity of corporations. There were cases prior to 1906, I may

46882 say, which said that you cannot make one company out of two, they are separate entities, they are separate artificial entities, and you cannot make them one, but since then I know that there have been cases that overruled those earlier cases, and which now hold in substance, I have not looked at them since this case started, but I have had occasion to look at them in other particulars, which now hold or have held that where you find two companies the stock of which is all owned by one, the stock of a subsidiary being all owned by the parent company, that it must be treated as one company. For instance—

46883 Mr. Hayward (interrupting): That it is in effect a consolidation?

The Master: Yes. For instance, I had a case some years ago where a man made a contract with the company that if it, that company, took up a certain kind of work, that it would pay him a certain compensation. They did not do that. Their trustees or directors and stockholders organized another company, and all of the stock of this other company was owned by the parent company, or its trustees or stockholders. The Court beat me on the proposition and said no, they are separate entities, the parent company did not take up that business, it was another company. I

46884 was irritated to the point of just watching the development of the Courts. I always felt that they would never stand for that, and I noticed several years later when another question arose somewhat similar, that the Courts had made a ruling that in a case of that kind it would be held to be the same company, and I was wondering just what the attitude of counsel was in this case. Do you take any position on that, or do you make any claim on it? Do you say I shall or shall not consider the Consolidated and Astoria and New Amsterdam as one company?

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Mr. Ransom: My best impression of the law is that they are still in the status of separate companies. So far as the basis of this case is concerned, I do not believe it is consequential to the complainant which basis your Honor takes as a method of figuring the—

The Master: Well, it may not be, but I want to get your position clear.

Mr. Ransom: We are in this position with respect to that. We offered proof embodied in the form of the Teele exhibits, like 205 and 354 and the corresponding exhibits for the eight months of 1919 and the nominal year ended October 31, 1919, on a basis 46886
which treated the Consolidated as a purchaser of gas from other companies.

The Master: Yes.

Mr Ransom: And showed the prices paid to other companies as a part of the cost of the gas sold by the Consolidated. We also made up exhibits like 501 for identification, which treated the thing from a different point of view, and treated it here as one manufacture and allowed no interest on investment, but treated it as a computation as to the cost of how much it costs, leaving out any of the elements that are paid to the other companies for return on investment, interest upon their investment in plant. We 46887
did try to offer operating statistics of the companies from whom the Consolidated purchased gas on the complainant's case, and your Honor sustained the objections of the defendants to that entire offer of proof, and we were not able to put in evidence upon our direct case the proof as to what it actually did cost the Astoria and these other companies on the transfer system to make and distribute gas. On the defendants' case, they were good enough to relax the harshness of their previous objection a little, and they put in Astoria's figures which enabled us to put in the

46888 Astoria figure, and they put in also the reports of the operations of the various other companies to the Public Service Commission, which were received in evidence, and in which you will find as to the years down to 1918 proofs as to the cost of manufacture on the part of the Mutual and the Standard and the New Amsterdam Companies, as well as the Astoria. Unfortunately, those reports to the Commission do not, as put in evidence by the defendants, cover 1919, so that they do not give anything like costs as of to-day, and they do not give the splitting up into items in all instances, which I take it your Honor would want.

46889 Mr. O'Brien: I just want to correct the record. The reports of the other companies to the Public Service Commission are not in evidence.

Mr. Ransom: They are in evidence.

Mr. Chambers: Not all of them, just a page here and there.

The Master: Well, whenever a page was offered, I took the whole report, and I am not going to take a part of a report.

Mr. Chambers: Well, you did so, you took so much of it as related to the subject.

The Master: I said I would take the whole paper
46890 and not part of it, and any party could point out any particular parts of it that he wanted to refer to, and I took it all.

Mr. Chambers: I must beg to differ with you.

The Master: I know what I did.

Mr. Ransom: The record shows very clearly that all of those reports were received.

The Master: It is a perfectly useless procedure to say I will take a page and have somebody else come and offer another page.

Mr. Chambers: But you did that very thing, the record shows what you did.

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The Master: The record shows now what I intended to do.

Mr. Ransom: I refrained from offering the main portions of those reports because your Honor specifically ruled it was not necessary to offer them. Our position with respect to this question your Honor has raised, is essentially this: The first inquiry we believe is what it costs to make and distribute gas in this territory served by the Consolidated, whether it is in the plants of the Consolidated or the plants of the Mutual or the plants of the New Amsterdam or the plants of the Astoria.

The Master: In that connection let me interrupt 46892
you. Don't I have to figure what it costs to make gas on Manhattan Island? Can I take cost in Long Island City and add to it the cost of getting it to Manhattan Island if that total cost is more than you can make it for on Manhattan Island?

Mr. Ransom: Well, I think it would be a matter of your Honor's judgment upon the whole situation.

The Master: I know, but I am asking you. I haven't got the figures clearly in mind, that is why I am trying to take up this basic cost of material and labor and other things. Of course you go over to Long Island City, and we will assume it costs you for the same labor and material, the same amount, be- 46893
cause there is no difference in the cost of labor and material on Long Island City and here.

Mr. Ransom: No, year in and year out, it is about the same.

The Master: Yes. Now, we start off with the labor and material, then you get an advantage in Long Island City because your taxes are lower, perhaps, or real estate values are lower, and in that sense it costs a little less to make gas when you add to it the taxes. Then you add to that, however—

46894 Mr. Ransom (interrupting): May I interrupt on that?

The Master: Yes.

Mr. Ransom: There is this difference between Astoria, Long Island City and Manhattan. Astoria, for example, has put in these enormous mechanical devices.

The Master: Yes.

Mr. Ransom: Which take labor costs out of your material and labor cost.

The Master: Yes, but the answer to that is, that the defendants say you ought to have them here, too.

46895 Mr. Ransom: But the effect would be this, not that they are necessarily more economical they reduce your cost of labor and material, but they increase your interest on investment.

The Master: I understand that point, but getting along to another question, assuming that when I analyze it all down I find that the cost of production is very much the same as it is on Manhattan Island, except that your tax item is lower and some other items, but as against that the interest on the transfer mains, that is the tunnels, and the investment there and the proper charges to be made for landing on Manhattan Island brings the cost above what you actually pro-

46896 duced for on Manhattan Island, including all those same items, taxes, &c., do you think I can give you a higher price for gas purchased at Astoria than you can produce it for here?

Mr. Ransom: Well, I think that is a matter of the reasonable cost of manufacturing gas under all the conditions.

The Master: It may be academic, because if I agree with your figures on Manhattan Island, I would agree with your claim that you are selling gas at a loss, but I want to get my theory right. The particular result in the net cost won't make any difference except except as fixing a rate for somebody else.

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Mr. Ransom: Well, there have been two slightly different theories which have been in this case, one, that held by your Honor, and one which is essentially the position of the complainant. We believe this regulation, this statute which is here under attack applied to the situation as it stands, and the plants as they stand, and as they have been located under the influence—partly on the judgment of the trustees of the company and partly under the influence of the demands of the public authorities; but what your Honor should find is the cost of making gas in the plants as they stand and then what is the necessary investment and the return on investment. The other course, and 46898
the one which your Honor was largely responsible for introducing into the case was the development of the question as to what we do under a fair average of conditions not in a particular plant, not in the plant of a particular company, but under the whole situation.

The Master: Well, I still think so. I think the consumer is entitled to have the determination of the question by the analysis of all the circumstances and facts surrounding the manufacture of gas the facilities that are or can be reasonably used on Manhattan Island, and the condition of the island as to the crowded condition of real estate and the rest of it, as to how far you are bound to go elsewhere to get it, 46899
and as to how far you were bound to use the plants that you had at 14th and 42nd Streets, and not let them remain idle and go somewhere else, but taking all these facts into consideration, what was in the opinion of the Court a fair cost of producing gas during 1918 and 1919. Now, that still is my view. You have 21st Street and 99th Street plants running practically at capacity, and that shows that it costs you to produce, according to your books, excluding certain items, 41.34.

Mr. Ransom: In 1918.

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The Master: And higher in 1919. And to that must be added, assuming I take those figures, the item of works expense, storage expense, distribution expense, overhead and all the rest of it, which according to your own figures bring it up to 80 cents or more, which would show a loss as of 1918, and a bigger loss as of 1919, and the answer to the question is given, I say, in a report that it costs you more than that to make gas, it costs you that in this Astoria plant at Ravenswood, or somewhere else. While I am at it, I think I will bring out this other question, too.

Mr. Ransom: Of course, Ravenswood don't
46901 come into it, because the Consolidated does not directly or indirectly take any gas from the New Amsterdam.

The Master: None at all?

Mr. Clark: They get large amounts of gas.

Mr. Ransom: It does not take capacity.

The Master: I know all about capacity.

Mr. Ransom: There is an exchange of gas in the transfer which may result at a particular time, in a particular year, in a balance one way or the other.

The Master: Well, you buy gas from them.

Mr. Ransom: Yes. But there is no portion of the New Amsterdam plant capacity which the Consolidated has any right to call on, they have no surplus
46902 capacity for delivery to the Consolidated.

The Master: Well, let me get your answer to the contention of the defendants that part of the general expense of officers and others should be charged against non-operating revenue, that is non-gas. On your tax items, or some of them, Mr. Teele figures that there was approximately 5 11 not applicable to the gas business. That is more than 1 3.

Mr. Clark: Yes.

The Master: Major Clark says that as to officers' expenses, general office and other items, 1 3 ought to be deducted. Isn't that your claim, Major?

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Mr. Clark: Yes, that is on that same basis, I just took a rough figure.

The Master: For non-gas work. Now, I understand your contention to be that no portion or nothing should be deducted, no percentage.

Mr. Ransom: Well, there are essentially two questions which they have somewhat confused. One is the question of whether any portion of the salaries and expenses of promotion, publicity department, engineering and supervision, general officers, utilization department and the like, and purchasing department, should be charged off as attributable to other companies.

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The Master: Yes.

Mr. Ransom: That is one question.

Mr. Clark: That is a fair question.

Mr. Ransom: And the other question is whether any portion of the time of general officers and the like should be charged off because devoted to non-gas business.

The Master: Yes.

Mr. Ransom: Which is a little different question.

The Master: I would like to have your answer as to both of those questions. First, as to one of them I think your contention is that your company does charge off what they believe to be the proper percentage.

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Mr. Ransom: We tried to show here the other day the details of the matters which are actually charged. Now, let us just take—but you did not permit that, although the exhibits of Mr. Teele and some other exhibits in the case do show with respect to particular items, that the amount is very, very large. Now, let's take the item of promotion and publicity, the utilization department and the like. They say that there should be one-third taken off that more.

Mr. Clark: We have not said that.

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Mr. Chambers: We have not said that, there hasn't anybody said that.

Mr. Ransom: All right, I will withdraw it then, if they do not say that, because for example on that item—

The Master: Well, don't argue it, counsel make no claim that there should be a further deduction on that.

Mr. Chambers: We challenge all of it, I say.

Mr. Clark: We say it is not proven.

The Master: Take Mr. Cortelyou's salary, for instance, and Mr. Carter's, they say one-third of that
46907 should be deducted because those gentlemen devote one-third of their time to investments and the interests of the company in other directions.

Mr. Ransom: No. Under the proof in this case all of these items like engineering and superintendence, maintenance of the departments of mains and services, maintenance of promotion department, maintenance of department of claims and arrears, the services of the collectors in the department of claims and arrears, the expenses of Mr. Livingston's department, the net cost of operating the General Office restaurant, the meter shop school and a number of others that have been referred to, they all have been charged for the
46908 portion attributable to the work done for other companies, and these figures which appear in Exhibit 205 are not the gross figures, but they are the net figures.

The Master: I understand that, there is testimony in the case as to how you apportion those items, and what basis you figured it on.

Mr. Ransom: Yes, so that we get the cost less—these expenses shown on Exhibit 205 are less cost of those apportionments. Take for example, here is an advertisement inserted in a newspaper in form, in size, in substance except for addresses at the bottom just the same as though it were inserted solely for the

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Consolidated Company. In fact, the Consolidated Company has to pay less than half of that cost. The same way with the other expenses there, they are divided. The total amount expended is no more than it would be if this company was alone, and the net amount paid by the Consolidated Company is about one-half or one-third of those various expenses I have referred to the types of items of which that is true.

The Master: Now, how about Mr. Cortelyou and Mr. Carter?

Mr. Ransom: Now, so far as the other question—so far as Mr. Carter is concerned, under the proofs in this case, Mr. Carter does do certain things for other companies, and he is paid by those other companies. Mr. Carter is paid more by the other companies than by the Consolidated.

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The Master: Eliminating those items of work done for other companies—

Mr. Ransom: No.

The Master (continuing): —and let me hear what you have to say about the claim of Major Clark that I should deduct something for the work done by Mr. Carter, to illustrate, as to the general financial operations of the company, as to their investment in other securities and as to looking after other matters, generally speaking, which he has testified is a very small portion of his time.

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Mr. Ransom: Well, included in Exhibit 205 are so many thousand dollars of Mr. Carter's salary from the Consolidated.

The Master: Yes.

Mr. Ransom: They say that one-third of that should be taken off.

The Master: Yes.

Mr. Ransom: Because he does certain things for certain other companies.

The Master: No.

46912 Mr. Chambers: No.

The Master: They say that one-third of that should be taken off because Mr. Carter does some work with reference to collecting the bond income of $448,000 shown on Schedule 14-A and interest on loan investments and dividends received from other companies, and miscellaneous rent revenue and other items making up the five million and odd, which is non-gas producing revenue.

Mr. Ransom: I thought your Honor was wanting the question argued seriously, and not made absurd.

The Master: Well, I am serious about it. That is
46913 their contention, that five-elevenths of the income of this company has to do with matters not relating to the gas business, and they say that instead of taking five-elevenths, they want me to take off one-third. In other words, they want me to adjust general office expenses, such as Mr. Cortelyou and Mr. Carter on the same basis that Mr. Teele has adjusted the taxes for gross revenue on gross income tax.

Mr. Ransom: Well, your Honor knows the situation with respect to the work that Mr. Carter does for other companies.

The Master: I am not talking about that now.

Mr. Ransom: The other companies pay him, and
46914 his compensation from those other companies is greater from the other companies—

The Master: I am talking about another item.

Mr. Ransom: Well, so far as the suggestion that five-elevenths of the time and the energy and the ability of Mr. Cortelyou and Mr. Carter is consumed in clipping the coupons off these securities—

The Master: Well, now you are trying to make it ridiculous. Their contention is this, that in order to safeguard the interests of this company Mr. Carter and Mr. Cortelyou devote some time necessarily to looking after these investments, to see that the com-

panies in which these investments are made are properly run, to watch their operations, just as you and I, if we have a dollar to invest, will watch the reports and statements of the companies whose securities we buy. 46915

Mr. Ransom: Are you referring to gas companies or other companies?

The Master: No, any companies, that is their claim. Am I right about that, Major?

Mr. Chambers: You are substantially correct, yes.

Mr. Clark: Yes.

The Master: I do not want to be understood as intimating what my views are about it. 46916

Mr. O'Brien: Your Honor, while I am silent here during all of this conversation that is going on, I do not want to have it assumed that because I am not indulging in this symposium that I subscribe to your Honor's condensed expression of certain of the defendants' claims that do not represent my claims. I want to have you know that so there will be no misunderstanding about it.

The Master: I am taking Major Clark's contention for a second.

Mr. O'Brien: Well, it might appear on the record that I did not put in some reservation—this is the age of reservations—that I was assenting to some of these things that you are saying. I have my own views about these things. 46917

The Master: Well, we will have a general discussion later.

Mr. O'Brien: Of course, the question right away of the returns from other sources, other financial investments—

The Master: Yes.

Mr. O'Brien (interrupting): It is not a question of how much Mr. Cortelyou will rack his brains over the cutting of the coupons and all that it would not be

46918 the energy or time, and even apart from the mental or physical labor that is put in where they have an immense investment, have an income coming from that, but there ought to be an overhead charged up to it, no matter how many sleepless nights Mr. Cortelyou or Mr. Carter put in.

The Master: Well, now, let's hear what your view is about that.

Mr. Ransom: I think your Honor agrees that the mere incident of holding securities for however large an amount, and receiving and depositing in the bank the income from such securities, involves an ex-
46919 penditure of time and labor so trivial as not to be measurable here in terms of dollars and cents, and passing that side of the thing—

Mr. O'Brien: Well, now, Judge, let me interpose just one statement.

Mr. Ransom: Let me finish my statement.

The Master: Don't interrupt.

Mr. O'Brien: Well, this has been a cross fire here, and I do not see why anybody should be startled when I want to make a statement.

The Master: Let me get his statement first.

Mr. Ransom: So far as the time which is spent by reason of this stock ownership with respect to the
46920 affairs of other companies, I have already referred to that, the fact that those expenses are met and shares of the expenses are paid. But I just want to call your attention to one further thing specifically, that is, if the Consolidated Company didn't own any of the stock of any other Gas Company in the City of New York, there would be some item of expense in keeping track of the affairs and keeping track of the situation as to sales and distribution system and the like, so that it is probably true, as has been testified here, that less time is spent by the general officers under the situation as it stands than would be spent otherwise. Now, so

far as what may be called the investment in securities other than the securities of these other Gas Companies on the transfer system, not very much time is probably consumed by Mr. Cortelyou and Mr. Carter looking after the affairs of the United States Government. We may assume that not much time is spent by them in looking after the affairs of the City of New York. The amount of time that has been spent with respect to these investments, which the annual reports placed in evidence by the Commission show remained practically the same from year to year, the amount of time is negligible, and the proof, the testimony of Mr. Carter and the testimony of Mr. Cortelyou, and the testimony of Mr. Brundage and other officers of the company I think covers that point thoroughly. These other companies affiliated with the Consolidated, each have their own general office and their own complete official and general office staff and such relations as exist between the operations of the companies is obviously not to the advantage of any one of them more than to the other. The officials of each company benefit by the experience and observation of all of the others, and far from being an expense to the Consolidated Company such contact and such exchange of views and experience and information between the officials of the Consolidated and the officials of the associate companies is a direct and palpable advantage to the Consolidated which cannot be measured in dollars and cents, but which far offsets any negligible margin of time which is spent by officers of the Consolidated in dealing with what has been referred to as these investments.

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The Master: Well, now, I do not recall at this moment any particular points that were in my mind—

Mr. Ransom: May I just say one further thing that I did not think of on that? Under the proof in this case, and there is no proof to controvert it, the

460124 situation was such that if the Consolidated did not have these outside investments, so called—

Mr. Hayward (interrupting): They would not be paying Mr. Cortelyou $40,000 a year.

Mr. Ransom (continuing): —they would not dispense with a single employee, and on the other hand if the work in the general office consisted of nothing more than that involved in the fact that the company holds securities of its allied companies and obtains an income from them, there would not remain, or be reason for retaining a solitary individual in the employ of the company in this general office of the company, for the whole matter would be turned over to
460125 a bank or trust company, which would be glad to perform this service for nothing, in exchange for the advantage of having these amounts collected included in the banks' funds for ever so short a period, and that is, so far as the work in connection with these securities, it is the common thing in this city, as your Honor knows, for estates and the like to simply turn these things over to the trust companies, and if that was all that was done in the general office, you would not need anyone there, and if that was not done in the general office, you could not dispense with a single employee and still go on with the business.

460126 Mr. Hayward: In spite of Judge Ransom's effort to belittle the contention, and his talk about Mr. Cortelyou doing an office boy's work going around clipping coupons, of course, that is just the same calibre that he is, that is too small a claim to consider. I would like to ask Judge Ransom why the Consolidated Gas Company hired Mr. Cortelyou and paid him $40000 a year and brought him over from Washington. He was getting $8,000 a year in Roosevelt's cabinet. He was not a gas maker, never saw the inside of a gas plant unless casually, as you and I have, in his lifetime, and he was brought over here because he was a

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big man of brains and ability, and was able to co-ordinate the functions of this great octopus or monster or whatever you call it, that came out of the lawyers' inkwells, this great combination of the interlocking Gas Companies which is so complicated and so complex that you and I after being in this case six months have to sit down with a paper in front of us to remember just exactly how it is done. It is not a question that involves the clipping of coupons or the going around to the bank. It is an insult to say that you can turn these interlocked companies over to a bank or trust company for the benefit of the deposits that will come. Business is not done that way. They have got 46928
Mr. Cortelyou, as I have said, for this whole system, not as a gas maker, because he is not a gas maker, but because he is a great, big broad brainy, man, he is a man who can get an audience with any man in this city in regard to the affairs of any of these companies; he can go into any bank in New York; he can go to any public official and carry weight and dignity and standing, because he is that kind of a man. And that is why he was hired, he was hired for the benefit of this system, and is not as a gas maker. He is the head of this immense company that happens to make gas in one section, and to say anything else is absurd. Mr. Carter is a man who has grown up in the gas business. 46929
If they had only wanted a man for the Consolidated, why didn't they take Addicks with the Consolidated Gas Company for president. Why didn't they take him instead of going down to Washington to get Cortelyou?

Addicks was the man for the Consolidated, but Mr. Cortelyou was the man for this great system, and to say anything else is an insult. We have said perhaps one-third, possibly it should be one-half, but certainly for Judge Ransom to stand up there shows the weakness of his case when he says we claim that

46930 part of Mr. Cortelyou's salary ought to be allowed for cutting off coupons and collecting the interest. We never said any such fool thing as that in the world, but we do say what I have tried to outline briefly, and what is perfectly apparent, and what anybody but a fool would know it was true.

Mr. Chambers: This is a very important matter, in my judgment, and Judge Ransom's answer to the Master's question it seemed to me was very weak, when he said that the testimony of Mr. Carter, and so on, explained it.

Now, as a matter of fact, according to their own
46931 admission—to which I do not fully subscribe—the revenue from non-gas business amounts to $7,759,408.40.

The Master: From non-gas?

Mr. Chambers: Yes, page 35 of Exhibit 205. I do not subscribe to it at all.

The Master: For non-gas it is five million.

Mr. Chambers: Have you page 35?

The Master: I have page 33.

Mr. Chambers: 35 I had.

The Master: Oh, I see, I have Exhibit 355.

Mr. Chambers: The defendants do not subscribe to that at all, but, for the purpose of this discussion, this
46932 is what he says: Look down through this, you will see that the bond income is over half a million dollars; interest on loans and investments $1,277,000; dividends received, $5,418,000—and so on.

As Colonel Hayward has said, you do not think for a moment that Cortelyou was put into this company because he had any knowledge about making gas. I think he would come here and say himself that he did not have any such knowledge. He was put in to take care principally, at least, of this $7,759,000, or whether it may be, perhaps it is eight million, but he was put into the company to take care

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of that as much as he was anything else. I think he was put into the company to take care of that more than anything else, because we have the gas makers, Woods, and the engineers, and the gas making part of the business, and certainly Cortelyou was not put in to reduce the cost of making gas, or to have them make better gas, nor was he put in to have anything to do with the making of gas. There is no proof by the other side as to what part of Mr. Cortelyou's time is devoted to this non-gas making branch of the business, and moreover, it is not measured by time, it is not how much Cortelyou devotes to the lending of money the revenue of which is over six and a quarter million 46934
dollars, it is not the time he puts into it, it is Cortelyou's ability to effect loans; it is Cortelyou's ability to deal with these Wall Street financiers.

As Colonel Hayward says, he can get a hearing anywhere, all he has to do is to show them a card, "George B. Cortelyou," and Wall Street will take notice. That is what he was engaged for.

Now, Mr. Carter—you have observed him throughout the case, because he has been here almost every day—he is perfectly competent to attend to that part of the Consolidated Gas Company which makes gas, and moreover, you have observed that a good deal of Mr. Carter's time must be devoted to taking care of 46935
that part of the business which is non-gas.

Mr. Ransom: May I call attention to one thing? They are asking for the apportionment not of Mr. Cortelyou's salary, or the salaries even of the general officers of the company, but for an item of over $300,000, which is made up of the entire general office pay roll.

Mr. Hayward: It was Judge Ransom that started Mr. Cortelyou to clipping those coupons, and not us, he injected him into this controversy.

Mr. Ransom: The salaries of these officers are ridiculously low.

46936 The Master: Now, I have brought up the item that particularly interested me as the case went along and that were in my mind when the case finished. I have not overlooked at all the other questions in the case such as invested capital, plant withdrawn, values, and working capital.

I will hear any suggestions there may be as to a general summing up. Is it the suggestion that Judge Ransom present his first, or that the defendants be first heard on the position of their claim, and then have the complainant answer it?

Mr. Hayward: He has gone on the theory
46937 that he has got the burden of proof. We have departed from it, it seems to me, many times, but I don't know why it should not be done in the ordinary way.

The Master: In ordinary litigation the defendant goes first to the jury, the plaintiff having the advantage of the closing argument. I am not sure which is the best way to get at it. It seems to me that the complainant having presented its theory of this case by its exhibits and its proof, will probably say, "Now, we have proved this, that and the other thing," just simply summarizing what I understand to be their claim. Do I get anywhere with that? Perhaps I would get further if I took the defendants first as in-
46938 dicating their claim that matters were not proved, or, if they were, that I should not have taken the books as any evidence, or Mr. Woods' testimony, whatever it may be. What do you say, Mr. Chambers?

Mr. Chambers: I would rather hear Judge Ransom first.

The Master: All right, I will hear you, Judge Ransom, as to anything you want to say in summing up.

Mr. Ransom: I think the plaintiff has the right here to the closing.

The Master: Well, I will give you a chance to reply. I will hear what you have to say now.

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Mr. Ransom: I prefer not to wander all over this field until I know what are the points that are necessary to meet. I think if I say anything now it will be very brief.

The Master: It may be noted on the record that the Master has received from counsel for the Public Service Commission a memorandum indicating very briefly their views about various parts in this case, which the Master appreciates. I have received no memorandum from any other defendants, or any other assistants, in that form.

Mr. Ransom: I shall endeavor to submit one in the course of the day.

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The Master: If you have it in the course of the day I will take it.

Mr. Hayward: Your Honor will understand that the memorandum submitted may not be in quite as good shape as it might be, because we only had two days.

The Master: I said it briefly set it up, and that is what I wanted. I do not want a book of 500 pages. You have given me what I want.

Mr. Chambers: I acted on the theory that the Master does not want briefs.

The Master: I don't want briefs, and I won't take briefs. All that Colonel Hayward has given me is a brief reference to the points raised and a brief explanation of various exhibits. That is all I want and that is all that is going to help me.

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Mr. O'Brien: The statement was made by you on Tuesday that on Monday you would receive any memorandum we saw fit to submit. I again call your Honor's attention to the fact that you have continuously in this case announced that you would not receive briefs, and would not receive requests to find, and we have acted upon that theory, that you meant what you said.

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The Master: I mean it now.

Mr. O'Brien: Talk about getting up a collection of points over night in a matter involving so many questions of fact and law.

Mr. Ransom: If the Court please, I shall refer only briefly to the contentions of the complainant, because they have been very thoroughly presented in the form of exhibits, and I shall submit in the course of a day a memorandum discussing some of those exhibits. I shall not attempt to cover this whole field at this time, but shall cover only main points now, and shall endeavor to reply briefly to such contentions as
46943 are made in behalf of the defendants in their opening argument.

We are dealing now with a suit which is more than a year old, and which has had a rather extraordinary course. It is now a year since the plants and the properties and the books of this company were thrown open to the counsel for the defendants, to the large number of experts, so-called, for the defendants, engineers, accountants, statisticians and the like, who have for a year been combing the books and the properties of this company to develop material to overthrow the contentions of the complainant in this case.

Since early in June several rooms in the office build-
46944 ing of the complainant have been occupied by the statisticians and accountants of the various defendants, who have gone over many hundreds of thousands of vouchers and underlying records, as well as the books of account of the company, not merely for 1918 and 1919, or not merely for the years from 1905 or 1906 down to the end of 1919, but for the whole corporate history of this company. The books and records from 1884 have been dealt with by these men, who not only were men of this city, but the so-called experts throughout the country have been brought here, especially by the defendant Edward Swann, represented

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ly the Corporation Counsel of the City of New York. We have had Chicago and Washington and Providence and other different portions of the country, liberally called on in order to bring men here to go through this company's books, and through this company's property, and it has not been merely an inspection extending a year in the case of these defendants.

The witness Maltbie was for many years a Public Service Commissioner with jurisdiction over this company. The witness Hine was for many years an engineer of the Public Service Commission, with the continuing duty exercised by him of keeping familiar with the properties and the operations of this company. The witness Weber and many of his staff were men who had been for years in continuous contact with the books, the accounts, the operations, the financial results of this complainant company.

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This case, I think, has been unique in that to a greater extent than in any rate litigation either state or federal that I have ever known about, greater than has true in the case of railroads or other public utility litigation in the history of this country, I believe there has been a long period of continuous access to the books, records, properties and accounts of this company; and in that connection I omitted to refer to the fact that Prof. Bemis and Mr. Edgerton, the other witnesses in behalf of the defendants, had gone very thoroughly, they claim over the books and properties and affairs of this company at the time of the prior rate suit in 1906 or 1907.

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Throughout the case there has been nothing left undone in behalf of the defendants to find anything to which they might point the finger of scandal or attack or suspicion. Witnesses brought to the stand have been attacked in a fashion which I would not like to comment upon adequately. Practically all of the companies from whom this complainant buys its

46948 principal materials have had their representatives haled here under subpoena; they have been bully-ragged and held up to suspicion, and an effort made to find some grounds on which the good faith of the transactions which took place could be impugned, and in general it is true that throughout the history of this case everything has been done to make precarious, distasteful and odious, as well as unprofitable, the business of supplying the people of the City of New York with the gas which they need.

We are dealing here with an ancient regulation imposed by the Legislature of the State in 1906 which
46949 in its very essence is out of accord with the present-day method of dealing with similar matters, and quite out of tune with the conditions of the last five years. Just think of all the things that have happened since 1906 that affect the price of the materials that enter into the making of gas and the conditions surrounding the supply of gas.

It is common knowledge, and under the proof in this case there has been shown a great increase in the wages of labor and in the prices of materials which has taken place during the duration of this statute, the purchasing power of a dollar has shrunk to only a fraction of its former power, and no business that I
46950 know of—

The Master: Let me interrupt you at that point. Is there any sworn proof in the case to that effect, that the purchasing power of the dollar has shrunk, or do you ask me to take judicial notice of it?

Mr. Ransom: Well, the Supreme Court of the United States has said it can take judicial notice of it. It is a fact that is readily computable from the quantity of labor and the quantity of materials which can be bought with a dollar.

The Master: In that connection I have it in my mind the question as to whether I am to take judicial

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notice of the rate of return which ought to be allowed, or whether you expect me to rely upon the testimony of McMillan?

Mr. Ransom: I shall refer to that in a moment.

Mr. O'Brien: I tried to point out the other day the distinction between Mr. McMillan's testimony and the testimony required by the Lincoln Gas decision.

The Master: I will ask you not to interrupt. I am wondering whether I shall have to take judicial notice of a matter such as the shrinking of the dollar, and general conditions, and the rate of return demanded, whether I have got to be deaf, dumb and blind to things I see and hear and know every day.

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Mr. O'Brien: This company will be getting it both ways.

The Master: I think this is a good place to discuss that.

Mr. Ransom: The rate of return?

The Master: No, how far I am to take judicial notice of conditions, unless it interferes with your line of thought. If it does, pass along and we will reach it again.

I might say this, for your own benefit and the benefit of other counsel, I was thinking of it last night, and the more I thought of it the more I got back to perhaps a very crude way of putting it, and that is, I am not deaf, dumb and blind, and for the life of me I cannot understand that any court or judge should close their eyes and shut their ears and dispose of what mentality and knowledge they have and say, "We don't know anything about it," when, as a matter of fact, they do.

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Mr. Ransom: On that question, in the first place, we have in evidence here the increase in prices which has taken place with respect to things that enter into the gas business. There is the increase in the labor, in the rates of pay shown from 1906 to the end of

46954 1919. There is shown the increase in the prices not only of coal and oil, but of the twenty-five other principal materials which have to be bought by a gas company for the carrying on of its business.

The purchasing power of the dollar in the history of the gas company, the decline which has taken place in the purchasing power, is fully reflected in this record.

Now, there is reflected in this record another thing, and that is the fact that other businesses, like the City of New York, does not attempt to get along today with anything like its rates of 1906 or 1910. The City
46955 of New York puts up its rate which it charges to the taxpayers. For example, the increase has been from $1.75 in 1910 to $2.48 in 1920.

Now, there is reflected in this record another thing which bears on the question of the purchasing power, and the antiquated character of the statute, and here is a fact which I ask your Honor to keep in mind as bearing upon some of the things which have perplexed some of these outside witnesses that have come in here.

The price of coal and oil and wood and every fuel with which gas as a fuel or as an illuminant competes, has gone up enormously. Gas has been kept
46956 stationary. If a man had to choose the kind of fuel that he would use during the winter or during the year in his business every other fuel has gone up enormously in price, and gas has been held rigidly at 80 cents by this statute.

I said that this statute represented an antiquated method of dealing with a situation like this. I say it does, for this reason, that the modern way which has been applied with respect to practically every phase of public utility rates in the states of this country is to vest in some expert regulative commission in behalf of the state, in behalf of its legislature, power to keep

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continuously and fully informed regarding the properties and the financial operations of a company, and then when increases is necessary in response to increased costs of materials, raise prices of the service rendered to the public; and when there is a substantial decrease, decrease prices.

The situation we have had in this state has been with respect to this act of 1906, that when there was a decrease in the price of labor and materials the witness Maltbie did not hesitate, as to any company which he could find in position where, under its financial operations, the charges could be reduced, he and the Commission of which he was a member made the reductions; and if this company from 1906 to the present time, its financial situation with respect to its operations, have been such, there is not the slightest possible doubt that Commissioner Maltbie and the Commission for the First District would have reduced by Commission order the rate chargeable by this company below 80 cents, just as the Commission upon the recommendation of Commissioner Maltbie did reduce below the rate fixed by the Act of 1906, as amended, rates charged by the Brooklyn Borough Company and the Kings County Lighting Company, and so on. So, I say here that all of the spirit of the times protests against this statute which we have here, which has undertaken to impose upon this important public service a rigid regulation in the face of the changed conditions.

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Now, as I see it, there are three essential points or questions in this case. In the first place, what is the present cost to make and distribute gas?

In the second place, what is the necessary investment or the value of the necessary property used in making and distributing gas.

In the third place, what should be the return upon that property?

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This complainant sells something over 18,000,000,000 cubic feet of gas a year for which it may not charge more than 80 cents, under this statute. We say that the present cost of making and distributing gas, in so far as that cost is reflected in this record, is in excess of 90 cents, and that no reasonable elimination which your Honor can in the exercise of a reasoned judgment make, can reduce the cost of manufacture and distribution alone to 80 cents or anywhere near it.

In the second place, with respect to the necessary investment, this company, operating in this City of
46961 New York, with a distribution system built partly through rock and partly through sand and mud and filled ground, and under the conditions which prevail here with respect to the rivers and the railroads and the value of land, the cost of labor and construction and the cost of materials of construction, this company has not undertaken to prove in this case the full value of its property.

The Master: Of its land?

Mr. Ransom: Of its property. There is in this case an appraisal of this property at its full value, or something like it. The Assistant Corporation Counsel took away from Mr. Miller when he was on the
46962 stand a paper that does show the present reproduction value of this company's property, and it is marked as an exhibit for identification in this case. But, we have not undertaken to prove our full value for the purpose of this case.

The value of property does not really necessarily enter in here at all, because this statute is confiscatory simply on the basis of what it costs to make and distribute gas. This rate is not reasonable if this company could make gas without any property; but under the proof in this case we say that the necessary investment we have shown, the necessary investment in

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the plants required for the manufacture and distribution of gas in this territory is at least $4.00 per thousand cubic feet of gas sold.

The Master: Does that include manufacturing and distributing?

Mr. Ransom: That includes manufacturing and distributing.

The Master: Storage facilities and all.

Mr. Ransom: Everything. We have proved at least that. It really is twice that.

The Master: In other words you say that for the 18,000,000,000 cubic feet that you sell per annum the records show an actual investment of manufacturing 46964
and distributing plant of $4.00 per thousand cubic feet?

Mr. Ransom: Yes, and that that amount is necessary.

Mr. Clark: 72,000,000?

The Master: How is that got up, that $4.00, as between manufacturing plant, storage capacity, and distribution

Mr. Ransom: I will refer to that in a moment if I may come back to it.

The Master: All right.

Mr. Ransom: In the third place, we say that under the proof in this case the rate of return upon investment under conditions as they are now, and as they 46965
seem likely to be, should be 8%.

Now, I will just refer to those three points briefly, and I think I will take them in the inverse order.

In the first place, as to the rate of return. The Supreme Court of the United States in the prior 80 cent suit laid down the rule that there is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises, that such compensation must depend greatly upon circumstances and

46966 locality, upon other things, the amount of risk in the business is a most important factor, as well as the locality where the business is located, and the rate expected and usually realized there upon investments of somewhat similar character with regard to the risk attending them.

Mr. Clark: Go ahead and read the rest of it.

Mr. Ransom: There may also be other matters which in some cases might properly be taken into account in determining the rate which an investor might properly expect and hope to receive and which he would be entitled to without legislative interference.
46967 The less risk the less right to any unusual returns upon investment.

Mr. Clark: Why don't you read what it says there—

The Master: Let Judge Ransom read what he wants to read, and then you can read what you want to read.

Mr. Ransom: In 1909, upon a record made in 1906, the Supreme Court held, as I understand that decision, that where the statute complained of had not gone into effect, and where the basis of the property value proved had been established almost wholly by the opinion evidence of the experts called by either side, with a wide margin of difference between them, and
46968 where the net operating income as found by the Supreme Court approached closely to a return of 6% upon the value of the property found by the Court below, through acceptance for the most part of this opinion evidence of the complainant's experts, the statute should not be enjoined in advance of its going into effect. That is, a return approaching 6% on the proof of reproduction value derived from opinion evidence was held to be not so palpably inadequate and confiscatory as to warrant the suspension of the statute before it actually went into effect.

Now, the Circuit Court did at that time find as a

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fact that 6% return under the conditions then existing was—I quote its language—"the return ordinarily sought and obtained on investments of that degree of safety in the City of New York," and upon that finding the Supreme Court predicated, no doubt, the conclusion above indicated; but whether or not the Supreme Court held in 1909, or intended to hold, that a 6% return on reproduction cost was nonconfiscatory, it is evident that conditions have very greatly changed. If 6% was adequate on reproduction cost in 1909, is there any possibility that now, under the proofs in this case, less than 8% would be adequate if figured on investment only? If present reproduction cost be 46970
not taken as the basis of computation, then the rate of return must be such as to reflect the changed condition, as especially applied to cost representing outlays in a period when the level of prices and wages was at least 50% below the present level.

Now, there seems to be some doubt in your Honor's mind whether the rate of return is something that you ought to take judicial notice of, or find out of the air, to use an expression which became historic in this case, or whether it is something you should find from the evidence.

Now, we believe that in the first instance the rate of return, in the language of the Supreme Court, expected under somewhat similar investments in the 46971
community, and hence necessary for the attracting of indispensable new capital to the enterprise, is in the first instance a question of fact, or at least it depends upon matters of fact, as reflected in the record.

Now, the uncontradicted testimony on the matter of the rate of return is the testimony of the venerable and distinguished Emerson McMillan. The defendants did not contradict him. He is a man, of course, whose large experience and practical business sense would make his views a safe guide, he not being in any way

46972 interested in any public utility in this city, or in this situation.

Now, Mr. McMillan's testimony was emphatic that under conditions as of today, and the conditions which are ahead, as far as he could see, a return he said, of eight or nine or ten per cent, in his own judgment it was ten per cent, was necessary, in order to attract independent capital into an enterprise, and so the rate of return which was ordinarily expected on the investments which compete with public utilities and gas industries in this general area is ten per cent.

The Master: Isn't there some proof in this case
46973 that you put out some securities recently at seven per cent?

Mr. Ransom: I was going to refer to that, and I am glad your Honor has called attention to it. This company during the present conditions had to get money, not a large amount, but representing construction needs from time to time it had to get that money. This is a company which has no mortgage on its properties. Probably no public utility of the country is in better position in that respect or in a more provident position, offering a very attractive form of obligation. This company had to pay 7%, and had difficulty, under the proof in this record, in marketing at that price.

46974 The Master: I do not recall any testimony of any difficulty.

Mr. Ransom: Yes, that was gone into. Mr. O'Brien asked various questions when Mr. Carter was on the stand.

Mr. Hayward: They are selling at a premium, are they not, above par?

Mr. Ransom: If you want to go outside of the record, I think 100 1/8, something like that.

If this company, in the situation in which it is, so far as the lack of corporate trust deeds, and the usual forms of mortgage burdens upon its property is con-

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cerned, needing a comparatively small sum of money, and offering a very attractive type of security, has to pay 7% to get its money, then surely on the basis on which a return is to be figured under the circumstances and under the decisions, certainly not less than 8% is adequate.

I want to call attention to another thing which your Honor may or may not take judicial notice of, that in this legislation which is in course of enactment in Albany, where they feel that they need to get money into real estate mortgage loans, first mortgage loans, one of the bills which has been recommended by the special committee, and which is in course of passage, 46976
increases the rate from 6 to 9% for loans on New York City Real Estate for building purposes.

The Master: I won't pay much attention to that, because a bill of that kind introduced from one source or another is apt to be at a very high level to start with, for bargaining purposes.

Mr. Ransom: Long before your Honor has determined this case that will be the law of this state.

The Master: What I am more impressed with is that the United States Government securities are selling at about 5%.

Mr. Ransom: Let me refer you to another thing. The Supreme Court announced in this Lincoln case 46977
that they took judicial notice of these conditions, the increase in prices of labor and materials entering into the cost of gas, and the new price level into which we have gone, and they said that one of the things which goes with that is that the rate of return which formerly was adequate now becomes inadequate, and that a higher rate must be fixed in these gas cases, and they fixed 8%.

Now, counsel for defendants have endeavored to discount the authority of this decision by claiming that the Nebraska statute regulating the rate of in-

46978 terest limits the legal rate for interest in Nebraska to eight per cent, whereas the New York statute limits such interest rate to six per cent.

I do not believe that has anything to do with it. The statute defining the rate of interest chargeable by individuals for certain types of loans to other individuals has no bearing on the rate of return which investors in a great public service corporation may reasonably require and expect in a time of high prices and high economic hazards such as the present.

Moreover, the New York statute to which they refer, regulating the rate of interest on private loans,
46979 does not in any way regulate or restrict or relate to the rate of interest payable as to this corporation, either by or to it.

So far as the proper rate of return is concerned, we have some other evidence here. According to the testimony of the defendants' witness, Prof. Maltbie, he and the Public Service Commission for the First District of which he was a member, commonly allowed the gas corporations of the City of New York in 1911, 1912 and 1913, rates of return fixed upon reproduction costs ranging, as he testified, from 7 1 2 to 8 per cent.

Now, it is true that the companies to which he and
46980 the Commission allowed such a rate of return furnished gas in the Borough of Brooklyn and Queens rather than in the Borough of Manhattan; but especially in view of the fact that companies operating in those boroughs have not been subjected to the 80 cent limitation in rates prescribed by the act of 1906, but have actually been permitted to charge 20 to 35 cents more per thousand cubic feet of gas sold than has the complainant; the risks and hazards—to quote the language of the Supreme Court—attending investments in the companies referred to, under the

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testimony of Prof. Maltbie, are less than those attending investments in companies operating in this territory which has received more diligent and drastic legislative attention.

There has not been anything shown in this record, and I do not know of anything outside of this record, to show why the Kings County Lighting Company, operating in the great Borough of Brooklyn, with a very large plant, as large as various of these Consolidated plants, should receive a higher rate of return than this complainant should be entitled to, figured on investment in plant and distributing system. We believe that if any gas company in New York City 46982
was entitled to a return on 7 1/2 or 8 per cent, or that such return was necessary in 1911 or 1912 or 1913, figured on reproduction cost, surely no less than 8 per cent would be adequate now for any company, especially if figured, as your Honor apparently contemplates, upon the minimum value represented by actual investment. So much for that phase of the matter.

We say not less than 8 per cent, and we think it is immaterial whether your Honor takes judicial notice of the whole matter or whether your Honor is governed by the facts which are proved in the record. The undisputed testimony in the record is, by the only 46983
man who testified on the subject, that more than 8 per cent is now required in order to get money, and that more than 8 per cent is now reasonably expected in the minds of investors which compete with investors in a public utility enterprise.

Now, just briefly on the second point with respect to the amount of property required. As I have said, we have not endeavored to prove, we did not rely here on that, because in this tribunal we have not thought it necessary to prove full value of our lands

46984 or anything else. We have proved a minimum value for the purposes of this case. However, on the basis of those proofs, we say that your Honor is justified in reaching the conclusion that for the manufacture and distribution of gas in this territory there is required the use of property and assets amounting to at least $4 per thousand cubic feet of gas sold.

In a memorandum which I shall submit I shall review the testimony in that respect a little more thoroughly than I shall undertake to do here. I may just refer to some of the facts in that respect.

46985 In the first place, aside from the proof as to the Consolidated Company, of Commissioner Maltbie, in 1913, in the Brooklyn Borough case, according to his testimony in this present case, had to figure a reproduction cost as of that time of a water gas plant. He did it under his peculiar method which involved the deduction of a considerable amount of accrued theoretical depreciation, which I do not believe any Court has deducted or will ever deduct, and yet the Commission, the defendant commission, acting on the recommendation of the chief witness for the Attorney-General, valued a water gas plant, deducting theoretical depreciation, at $4.85 per thousand cubic feet sold.

46986 The Master: For the manufacturing plant alone?

Mr. Ransom: No, for the manufacturing and distributing system and other properties.

The Master: Did he subdivide it as between manufacturing plant and distributing system?

Mr. Ransom: He did in the report, of which your Honor would doubtless take judicial notice, because it is a reported decision of a tribunal. I am referring only to the things which are in evidence here.

The investment he found also of the company, what it cost for their plant, was over $4. His reproduc-

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tion cost as of 1913 was $4.85, and he also worked out a cost of reproducing the plant and distributing system, and exclusive of land it was over $4, even deducing theoretical depreciation.

Mr. Clark: Where was this plant?

Mr. Ransom: In Brooklyn. Now, the Kings County Lighting Company in 1911, the Commission valued on the recommendation of Commissioner Maltbie a water gas plant, and what did he find. It related to water gas plant only, a large plant, distributing system, populous districts—$4.25 per thousand cubic feet sold.

46988 The Queensborough Company in 1911, valued by the Commission, on recommendation of the Attorney General's chief witness. What does the report which is in evidence here show? The precise figure found in the Brooklyn Borough case, $4.85 per thousand cubic feet.

The Master: Including land?

Mr. Ransom: Including land, but with this theoretical depreciation out. It probably was not any accident that he said $4.85 for both. Exclusive of land, over $4 with accrued theoretical depreciation out, investment of the company over $4.

46989 Now, Mr. Little—I do not attach much importance to his figure in this respect—your Honor interrogated him about the Chicago figures which worked out something over $4. Your Honor asked him about calculations as of 1913, I think it was, and he said $2.80, water gas only, 100 per cent more for 1919, which in itself would bring $5.60 for water gas per thousand cubic feet sold. That is for water gas only, and Mr. Little testified that a coal gas plant has cost through the years at least 50 per cent more than a water gas plant.

The Master: Woods said twice as much, doesn't he?

46990 Mr. Ransom: Mr. Woods and other witnesses for the defendant have said, when all things that are necessary are taken into account, that it amounts to nearly twice as much. The thing about Chicago, where Mr. Little figured $5.60 is that Chicago is in a situation somewhat similar to New York in that it buys part of its gas.

The Master: What was that figure that Mr. Woods had in his report of $156 for the New York Mutual?

Mr. Ransom: That is the cost of manufacturing plant exclusive of land.

The Master: $156 per what?

46991 Mr. Ransom: Per thousand cubic feet of capacity, no distributing system. May I refer to one thing in respect to that New York Mutual figure while it is in my mind? Mr. Woods testified and it was of course embodied in the report, that he had calculated from the books and from his knowledge, and so on, that the cost of the New York Mutual Manufacturing plant here on East 11th Street was $157 for the plant alone, per thousand cubic feet of capacity, and with land, $206.75, if I remember the figure correctly.

The Master: What does that represent per thousand cubic feet of gas sold?

46992 Mr. Ransom: That you would have to translate, because it is not really that gas sold, it is manufacturing capacity.

The Master: What I was getting at is that if you take $156 per thousand cubic feet of capacity for plant alone, can you tell me what that represents per thousand cubic feet of gas sold.

Mr. Ransom: I have not figured that out. That would involve translation in the first place from capacity to make, and then a translation from make to sold. I do not see how you could make such comparison on any basis that would be of value.

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Now, as bearing on the reasonableness of that figure, that is the investment shown under the proofs of this case, that is the 10,686,000 cubic feet of Mutual capacity which is used, is paid for at that rate per thousand cubic feet capacity used by the Consolidated.

The Master: He used the same figure for the Ravenwood plant. His only difference between the Ravenswood and the New York Mutual was the land figure. He said a water gas plant was worth $156 per thousand cubic feet of capacity.

Mr. Ransom: Of course the Consolidated does not pay for the use of any New Amsterdam plant. The 46994
Central Union does, because the Central Union regularly and necessarily gets a part of its gas from the New Amsterdam. New Amsterdam has a manufacturing capacity over and above its own requirements, and that capacity of the New Amsterdam over and above its own requirements is devoted entirely to the Central Union.

The Master: I understand that, but my recollection of Woods' testimony is that he said that a thousand cubic feet of capacity, whether of Manhattan or Long Island, was worth $156.

Mr. Ransom: I think that is substantially the case, as appears at page 14512 of the record. 46995

The Master: He gives a lower value for land on Long Island than on Manhattan. What I had in mind was, how can I figure that out, taking that basis of Woods of $156 per thousand cubic feet of capacity of a water gas plant, what it would represent in the sale of a thousand cubic feet of gas?

Mr. Ransom: I am afraid you can't work that out very definitely as to a single plant, but as bearing on the reasonableness of this figure, and as confirming, even aside from the proof in the record support-

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ing that particular figure, I call your Honor's attention to this fact: The plant nearest to the Mutual, the nearest water gas plant is the 21st Street plant. The Mutual is twenty-four million, and 21st Street is 28,500,000. It is a water gas plant in similar location, they are near together, and under the proof in this case, under the tabulations which have been put in, the investment in the Consolidated plant, the 21st Street plant, is practically $200 per thousand cubic feet of capacity as compared with the Mutual figure of $156, exclusive of land. It is comparable, including land, with the Mutual figure of $206.75, the Con-

46997 solidated being approximately $200, $198 or $199, something like that, for the 21st Street water gas plant.

The Master: What I think will help me in my analysis of the figures is if you can tell me how that $4 for total plant, including distribution, is subdivided?

Mr. Ransom: I do not think I can do that at the moment, but I can give you these subdivisions of it. The comparison between the application of that $4 figure and the Consolidated situation, according to Schedule G, Exhibit 496. The cost of the Consolidated Company's property used in its gas business

46998 as of December 31, 1918, that is with the elimination of property not used, and with the elimination of the part of the general office building used by other tenants, and with the elimination of these joint facilities which troubled Mr. Chambers the other day, and was not in the rate base at all, rented to the Central Union and so on and used by them, the figure is $51,081,393.99, a little over $51,000,000.

The manufacturing plant of the Astoria Light, Heat & Power Company, including its various elements, shown both by our exhibits, and by page 40 of the

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Sangster report, and its accuracy is confirmed by the valuation put on the property following a checking up of the inventory by the Public Service Commission at the time certain securities were authorized, is a little over seventeen million dollars, including working capital, or as we put it in our Exhibit No. 500, $17,000,000, at least, which shuts off about $650,000.

The investment of the Mutual Company in that portion of its manufacturing plant contracted for by the complainant, as shown on page 14512 of the record, Exhibit 500, is $2,198,377.55. That, of course, is the 10,686,000 cubic feet of capacity of manufacturing plant.

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Now, the portion of the jointly used facilities which are used in the complainant's business, as described and shown in detail at page 14515 of the record, and summarized in Exhibit 500, are $3,976,085.10. That makes a total cost of property used in manufacturing and distributing gas for the complainant company, including real estate, manufacturing plant, mains, services, meters, appliances, etc., required for the production, transmission and distribution of the gas sold by the Consolidated Gas Company, which for the twelve months ended October 31, 1919, was 18,321,589,800 cubic feet, $74,255,856.64, and the total manufacturing plant capacity is $104,186,000.

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The average cost per thousand cubic feet of annual sales then is the seventy-four million dollars plus divided by the total amount sold during that twelve months. That is $4.05.

I might give the plant capacities as are shown by these same exhibits. The plant capacity owned by the Consolidated is 43,500,000. The plant capacity owned by the Astoria but used in making gas for the Consolidated, is 50,000,000; the plant capacity of the Mutual used in the service of the Consolidated con-

47002 stoners is 10,686,000, making a total of 104,186,000 of plant capacity.

The Master: Isn't it correct to say, though, in taking that figure, that you have discussed, that the $17,000,000 of investment in Astoria contemplated a very extensive use of the property beyond what it is now put to? In other words, a lot of those appliances that you have bought there will be used, as Mr. Woods testified, in this new thirty million plant.

Mr. Ransom: No, I think if your Honor has that impression, your Honor misapprehends Mr. Woods' testimony in that respect. There are certain things
47003 that are unnecessary for a plant as it stands, that you have not got to double or increase at all if you put in other water gas units alongside of it. It is not that the original installation is larger than it would otherwise be. For example, here is a laboratory. Your Honor may remember seeing it at Astoria. They do not need a smaller laboratory.

The Master: In other words you claim that you would need the same dock and the same crane, and the same hoisting apparatus, and the same wharf facilities, whether you extend your plant or not?

Mr. Ransom: Not only that, but some of these things would have to be increased as additional plant
47004 is put in. Take matters like the office. The office was built for the needs as they stood. We wouldn't have to have a larger office, because we put in that thirty million more capacity. Take the laboratory, we don't have to have more laboratory, one laboratory is enough.

The Master: You use the same scale?

Mr. Ransom: Yes, you take gas out of a main and test it and it doesn't make any difference whether the total capacity of the plant is 50,000,000 or 80,000,000. In the continuous tests of coal, it does not make any

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difference whether you are testing for a 50,000,000 capacity plant or an 80,000,000 capacity plant. It is true that there are certain things when you add to the capacity at Astoria that you do not have to duplicate. Now, there are other things that Mr. Woods indicated you would have to do if you put in additional capacity.

The Master: Didn't Mr. Woods say at some place in his testimony that they were not using the coal gas plants to capacity in order not to interfere with the operation of other plants?

Mr. Ransom: What you have in mind is this: 47006
There had been two things which at times have operated to produce less than maximum—perhaps three things—less than maximum operation of coal gas plants. One is that there has been a very serious shortage of coal for the last year.

The Master: And the government operations.

Mr. Ransom: And the fact that the government had part of that plant.

During the summer months, of course, it would be possible, by running Astoria to maximum capacity, to do what Mr. Little suggested in one of his theoretical alternatives, namely, reduce to a maximum or shut down altogether the 99th Street plant during
these summer months, curtail somewhat the 21st 47007
Street production, and make all of the summer gas—you could not produce all of the summer gas, but more of the summer gas, at Astoria.

This, however, is the situation—and I do not believe that it is a matter on which your Honor would find reason to disturb the sound operating judgment of Mr. Woods and the authorities of this company: Laying aside the question of whether the gas made at Astoria would be economical—and personally I think that 99th Street plant under the figures in this

47008 case is a very economical plant, which I think is beyond challenge, and the 21st Street likewise; and Mr. Woods said a plant of the size of 21st Street and 99th Street in a lot of ways was as economical and efficient in operating units as it could be. Of course, when you have the larger plant, other things enter into it.

But aside from that, would it be advantageous, would it be good business judgment, to disrupt the labor force at 99th Street and close it down, to disrupt and scatter the labor force of 21st Street and close it down in part? Gas makers require skill, ex-
47009 perience and efficiency.

Would it be economical to dismantle or disrupt the labor forces at those plants for two or three months in the summer—only two, really—and let the gas made by those plants under the present method of operation be made in coal gas plants at Astoria?

Now, the company says it would not; that merely because it would be possible to have Astoria run to capacity during the summer and those other plants partly idle during July and August, when people are away, it does not by any means follow that that would be economical and advantageous in the long run.

47010 There is proof in this case, partly put in by the defendants, and their claim has been that 14th and 42nd Street should not be included here, because it costs money and it is expensive to get a labor force together to operate them for the winter period. And yet with the other breath the defendants might say and may say that it would be advantageous to disrupt and scatter your labor forces at 99th Street and 21st Street for the summer, and then try to reassemble a labor force in the fall.

If your Honor will study these figures as I have studied them, I think your Honor will reach the con-

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clusion that it is the more economical and the more advantageous thing to do to curtail production during the summer at 99th Street and 21st Street and Astoria in such a way as to keep all those plants going and to keep the skilled elements in your labor force together during July and August, so that you have not got to go out and gather them together from the four winds in the fall.

There is an advantage, too—we may as well refer to it frankly—which your Honor will not be slow to comprehend, I am sure. Under the industrial conditions as they have prevailed in the last five years, it may have occurred to you that there are definite 47012
advantages from the viewpoint of the continuity of service rendered by this company, keeping gas going to the consumers, which is the all-important thing. There are real advantages so far as that is concerned, not to have all your gas made in one place. Put all of your labor forces in one plant and you have increased the hazard, you have put yourself in a far different position than you are under the plan followed by this company and under the situation of its plant, under which there is 99th Street and 21st Street; 14th and 42nd Street, with their separate labor forces, and Astoria with its own labor forces. Any suggestion of either scattering the labor force at 99th 47013
Street or 21st Street, which would be bad, or still worse to transfer them to Astoria for the summer, would not be in the interests of the consumer, and, in spite of anything that these defendants' counsel have said here in this case, the consumers of the city are more concerned in having their gas going twenty-four hours in the day, and every day in the year, with an adequate supply, than they are in any question of a cent or a cent and a half.

Just on that phase, one further thing I should per-

47014 haps refer to, because your Honor raised a question in that respect in one of the colloquies during the case. In a public utility the amount of equipment, plant and facilities which it has to have is not determined by the minimum use made of those, or the average use made of them, but by the maximum use. For instance, a railroad is entitled to a return upon all its rolling stock, even though a large part of that rolling stock is used in commuter traffic which only runs two hours in the morning and two hours in the afternoon. A subway or an elevated or a street railway service likewise is entitled to a return on all its
47015 equipment, even though that equipment is not used to maximum capacity except during certain hours of the day. Likewise as to an electric lighting company. The amount of equipment, the amount of generating plant that it has to have, is determined by the peak demand, and that peak may be used only an hour or two a day, and part of that capacity, generating capacity, may be used only during the peak hours of the peak months; and yet no one has ever suggested that an electric company is not entitled to a return upon it investment in all the property it has to have in order to meet the demand which the public makes upon it at the maximum time.

47016 That is the same situation with a Gas Company. Here are all these meters and all these stoves and appliances, ranges and all manner of devices, all over this company's territory. The amount of gas which this company has to supply is in the control not of the company but of the consumers. There never has been a time in the history of this company when it could take the position that it could not or would not have, or that it could take the chances of not having in its mains, all of the gas that the consumers might turn on or call for and use.

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And so the point which I wanted to emphasize is this: Even though part of the Astoria plant or part of the 99th Street plant is not in operation during the summer to capacity, nevertheless, that belongs fully in what we may colloquially call the rate base. The company has to have it to meet the peak demand. Used and useful, as a matter of terminology, in rate cases is not identical with operation. A plant or portion of plant may not be in operation on a given day or a given week or a given month—like a stand-by plant in an electric company, which may never operate except in case of breakdown—but it is used and useful if it is required by the company for meeting the demands of its consumers at some time. And included in the capacity which a company may have to have and does have to have is not only what it actually has to have in order to meet the demand which has so far arisen, but the capacity which it has to have in order to meet the demands which according to reasonable calculations may at any time be made upon it.

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In other words, there is the reserve part of a gas or electric plant or other public utility equipment: the reserve part is just as much used and useful as the part which is in operation every day and every hour, because the consumers have to be supplied and the company has to be in position to supply them. And this company has repeatedly, under the proofs in this case, found itself in a position where, under the conditions as they seemed to be ahead of the company, it had to make provision to supply added capacity and maintain a reserve in something like the same ratio.

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So, a very interesting comparison is the comparison of the increase which has taken place in the years from 1905 down to the present time in the sales and

47020 the increases in capacity that have been necessitated from time to time during that period. For example, when this Woods' report was made up, figuring on the basis of the developments during the winter of 1917-1918 they figured that they had a capacity of 17.2% —reserve capacity of 17.2%. Conditions went on until this present winter, when even with the 14th and 42nd Street plants included, there was not any 17, there was not any 10, there was hardly a 5, and the company found itself in the position where the matter of the first importance was to do what it has done, namely, in 1919, to start, so that there could be
47021 finished before the winter demand of December of 1920 comes on, a full 30,000,000 more of plant capacity.

What for? Not for 30,000,000 of reserves. Under the situation as it works out, under the proofs of this case, it will not be 30,000,000 additional reserve; the percentage will be very much less, if the ordinary trend of conditions continues. But in any event, that is the kind of thing the company has to deal with when it finds a situation such as has developed during the last few winters, crowding up the requirements of its consumers, whittling its reserves to a negligible factor. There must be new plant capacity and the com-
47022 pany has provided that.

Now, the point which I make is that the reserves, the part that is used when called on, is just as much a part of what the company is entitled to a return upon, provided it is within a reasonable quantity, as that which is regularly and habitually employed.

The Master: I think the defendants concede that you are entitled to the reserve.

Mr. Hayward: Why, certainly, we concede all of that. There is no dispute about it at all.

Mr. Ransom: There has been this talk about five per cent reserve.

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The Master: It is only a question of what percentage of reserve there should be. You need not argue that.

Mr. Ransom: There has not been a man of any experience with gas manufacturers in this country who would say he would undertake the construction of a plant for five per cent reserve.

The Master: When your reserve gets low you have to put up new reserve plant, and that reserve is apt to run a great deal more than five per cent. There is no question about that.

Mr. Ransom: Certainly, I may say the construction of the new plant has been based on the calculation 47024
that, without further increase in the maximum day's requirements, and on the assumption that the quality of oils continues as it has been, and does not do what it is likely to do, deteriorate, with resultant effect of decreased production of gas per operation of machine —with those two assumptions, the new plant will allow a reserve of 23%, with 14th and 42nd Streets still included; and there is not a bit of testimony in this case outside of this wild conjecture of the witness Hine, on which you could base a conclusion that a reserve of less than 25% in this city was reasonable, or was prudent, or was even safe.

So, then, on the matter of plant we say that on 47025
the testimony outside of the proof in this case as to what the Consolidated has, what is used actually in making gas for the Consolidated, if there was not a shred of evidence in this case as to what either the cost or the value of the plant was in making and distributing gas of the Consolidated—if there was not any such evidence your Honor would not only be justified but required to reach the decision that for the making and distributing of gas here $4.00 per thousand was a minimum.

47026 The Master: I think one thing is sure, and I think probably defendants' counsel will concede that—that there is a value to a manufacturing and distributing plant of some amount upon which the consumer must be required to pay a return. There is no question about that; it is simply a question of the amount, if I can figure it some way. In other words, what is in my mind is this: If the consumer gets a thousand cubic feet of gas he must know and must assume that it takes a manufacturing and distributing plant to get it to him. Isn't that so?

Mr. Clark: That is correct, yes.

47027 The Master: Now, it is simply a question of how much of that manufacturing and distributing plant ought to be charged to the consumer—what that fair value is.

Mr. Clark: Of course, we do not concede that you can have people go on the stand and say it is $200 a thousand.

The Master: Of course, I have not reached a conclusion as to just how it is to be done; but one factor is perfectly clear, and that is that the consumer has to pay a return on the fair value to him of a manufacturing and distributing plant. It is the thing that is necessary to get him the gas. There is no ques-

47028 tion about that. Are you through with this?

Mr. Ransom: I am at this time, unless your Honor—

The Master: No; go ahead, Judge.

Mr. Ransom: To conclude on the matter of the quantity of property required per thousand cubic feet of gas sold, we submit two propositions. In the first place there was not any proof in this record as to what property the Consolidated had, or what the value of its property was, or the investment in its property, investment in property used in supplying gas to the consumers, making, distributing and transmitting.

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We say your Honor would be required to reach a conclusion that at least four dollars—and I think on that basis the figure would be higher than $4.00, because if you take the figures that have come simply from defendants' sources, the figure would be substantially higher than $4.00. The second proposition is that if you take, however, the property which the Consolidated had, and its investment therein, and the property of other companies which is used in the manufacture and distribution of gas sold the Consolidated consumers, this investment being shown in Exhibit 500, thereby you reach a figure of almost exactly $4.00, or $4.05 per thousand.

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Coming to the remaining phase of the case, which after all is the more important phase of the case, I shall not dwell upon that long because various of the aspects of it have already been gone over in the oral argument. We believe that on the basis of the prices which have been proved in this record, that the costs which have been proved in this record that the costs of making and distributing gas, outside of return on anybody's investment; treating this, if you will, simply as one company with a little over 100,000,000 of capacity, the capacity used in the service of the Consolidated consumers, and leaving out the return on the Astoria investment paid in the purchase price of the Consolidated to the Astoria, leaving out the payment to the Mutual for the use of their manufacturing plant—looking at it simply as what it costs to make and distribute that on the basis of the prices, the definite prices that are reflected in the testimony and the exhibits which have been marked in evidence, the cost of manufacture and distribution alone is over 90 cents or, to be precise, about 93 1/2 cents.

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That I do not believe is the cost as of today. We offered and handed to the Attorney General the oil contracts for 1920. We made up and furnished to the defendants in January our complete 1919 operat-

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ing results, showing what it had cost in 1919. We offered in evidence the schedule of wages in force as of February, 1920. We offered and tried to prove the coal prices as of February, 1920.

All of that proof was objected to, and the objection was sustained. The company did not take advantage of the proposition of your Honor that this was not rebuttal and that we should apply to reopen the case, with all that involved, because this company could not contemplate an indefinite further continuance of this trial, and we felt that what we had proved, with the prices which were in evidence, ade-

47033 quately established our case.

Mr. Woods in Exhibits 353 and 354, testifying as of October, shows coal and water gas costs, exclusive of return on anybody's investment as of that time.

The Master: Those exhibits are only for identification.

Mr. Ransom: Yes, for identification.

The Master: He testified orally to the figures.

Mr. Ransom: He testified orally to those figures, and they were spread at great length upon the record.

Mr. Clark: As to quantities.

The Master: I excluded some of those figures

47034 from Mr. Woods' statement—taxes and some distribution expense.

Mr. Ransom: Taxes and a part of cost of distribution; that is, you included commercial expense and general office expense.

Mr. Clark: Your Honor excluded his testimony as to prices, too.

Mr. Ransom: That is not quite correct.

The Master: Yes, it is, substantially. I said I would take the prices from other sources. I do not think, however, the statement shown in some memorandum here that I excluded labor costs is correct, because he had already testified to labor costs.

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Mr. Clark: You cut the cross-examination down.

The Master: Well, that may be, that at that particular point I said, "Do not cross-examine on that," because we had had all that in his exhibits, showing the increase in labor costs, and I did not see the usefulness of going into it again in connection with his costs of production. But I did take his statement as to what he paid for labor; he is the one man I would take it from, because he knew what was being paid, what he hired them for. I will look up the record to see if there is an error in the record in regard to that.

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Mr. Ransom: There was spread upon the record in great detail his computation of the way in which he reached these labor costs from his rates of pay.

Mr. Chambers: You are speaking of Woods?

Mr. Ransom: Woods.

Mr. Chambers: The Master said he would not take his testimony.

Mr. Ransom: He said nothing of the sort.

Mr. Chambers: I will quote you on my summing up.

Mr. Ransom: That is picayune.

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The Master: Do not quote me in summing up, but tell me what your proof shows. What is the use of quoting me; wasting hours quoting me does not get you anywhere. I am just as apt to be misquoted in the record as I am to make a misstatement of something. Tell me what your claim is that the proof shows, or what the proof does not show. Do not waste time telling me what I said somewhere.

Mr. Ransom: I call your attention to two things. Quantities are fully confirmed by the matters to which I have already called your attention. I will call your attention to just one further thing, that if you take the 1918 results, the quantities used in making gas at Astoria or at the Consolidated, and apply the prices

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of materials and the wages for labor as of October, 1919, you get a complete confirmation, you get costs corresponding to those computed by Woods in Exhibits 353 and 354 for identification and appurtenant testimony.

In other words, the difference between the 1918 costs and the October, 1919, costs is the difference in the wages of labor and the prices of materials, especially coal and oil. And if you take, for example, on coal gas, the operating results for Astoria as proved by the defendants in this case and as shown in the Astoria reports to the Commission, and as
47039 shown in Exhibits 485 and 486, right down through this list, with respect to substantially every item you will find that in 1918 and in 1919 the results in Exhibits 353 and 354 are confirmed.

I do not know that it is necessary to go over the way in which the cost, the present cost, is computed Exhibits 353 and 354 show coal and water gas costs as of that October, 1919, and Exhibit 501 for identification brings together that statement of present cost in summary form, showing coal gas cost, and water gas cost apportioned to procure an average station cost on the ratio of 22 per cent coal gas and 78 per cent water gas, the figure testified to in this case
47040 and shown by the operating results of the Consolidated, that the gas sold by it is 22 per cent coal gas and 78 per cent water gas, as shown on page 8773 of the record.

Under the prices of coal and oil and labor as they were in October, when Mr. Woods testified, the average station cost production alone is 52.03 cents. The proof in this record, however, does show a substantially increased price for oil. It shows a price of oil substantially in excess of seven cents. Mr. Little on the stand confirmed various present coal prices in excess of Mr. Woods' figures. For example, a figure of $6 per gross ton for gas coal.

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On the basis of those prices, if you assume 7 cents plus lighterage for gas oil, and if you take Mr. Little's February prices for coal, you get a figure for coal and water gas higher than that testified to by Mr. Woods, shown in those two exhibits for identification, and you produce, taking into account the various items of distribution and general expenses, the figures to which I have referred.

I do not see how you can figure out any way of eliminating enough from the present cost to manufacture and distribute gas under any reasonable way, to bring that cost down anywhere near—

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The Master: Do you think I ought to eliminate anything?

Mr. Ransom: My own judgment is that you should not, except this defensive emergency service of course is eliminated on Exhibit 501. Defensive emergency service is eliminated not because it was not a proper item in the operating expenses for 1918 and the early part of 1919, for it was.

The Master: That is not a usual expense.

Mr. Ransom: Yes, it is not a usual expense. For that reason in determining for the future you would eliminate it.

The Master: How about these Red Cross contributions?

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Mr. Ransom: But if you find as a part of your findings in this case the operating expenses of 1918, you have got to include it, in my judgment.

The Master: Oh, if I make a finding that it costs you to operate your plant a certain sum for a certain year, of course I would have to include it, but I think my finding ought to be what—excluding particular war conditions—required actual expenditure and the consumers under this statute must assume it is going to cost you to make gas year in and year out.

47044 Mr. Ransom: Well, take one further thing—residuals, 1918, and early 1919 prices. The 1918 prices for residuals, an account of their demand for war purposes, was of course abnormally high. As soon as the armistice came the prices of residuals dropped and the prices of coal and oil went up. You cannot in finding 1918 expenses, and it would not be proper to, take the residual prices that the Government was willing to have paid, because these residuals were used for war uses, and exclude defensive emergency service.

Take the matter of the Red Cross. Mr. Teele has
47045 upon his exhibit United War Work, the seven great war charities, excluded it. My own judgment would be that it should not be excluded. There is a statute—I do not recall the chapter number at the moment—enacted by the Legislature in 1918 for the very purpose of authorizing and legalizing these contributions.

The Master: Yes, but it is not a usual expenditure.

Mr. Ransom: It is not a usual expenditure.

The Master: It is an unusual expenditure for that year.

Mr. Ransom: Yes, to be included in your 1918 ex-
47046 penses; it would not be included in finding the cost of making gas as of October, 1919, or as of the present time.

The matter of the expenses of this present rate case defendants contend should be eliminated. If it were eliminated it would affect the cost per thousand to the extent of .546, or 54 100 of a cent. In other words, the expenses which have been proved, incident to the rate case, in the exhibits in evidence, shown in the books of the company, amount to .54 cents per thousand cubic feet of gas sold. My view as to that is very clear. It ought not under the authorities to be

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eliminated. I am more concerned about it as a matter of sound principle than in the matter of the amount.

Under the authorities the rule seems to be this, as it has been laid down by various Public Service Commissions and in only one instance, that I know of, in the courts where they have been questioned. Usually they are allowed without question. The rule seems to be, as laid down in a large number of cases which I can cite to your Honor, that if a company is successful in a suit it is entitled to have the expenses of getting rid of the rate included in its operating expenses and pro rated over a reasonable number of 47048
years. In this case if the complainant succeeds in establishing the impropriety of the continuance of this statute as against these defendant public authorities, the rate expense should be included and pro rated over a considerable number of years.

There are cases in Illinois, and one case decided by Commissioner Hayward during his service upon the Commission for the First District, where a proceeding was pending before the Commission and a reduction in rates was being asked by complainant consumers, in which the Commission determined that the reduction was one which should be made and should have been made, and that the company had 47049
been earning substantial profits before the time of the hearing before the Commission; and then the Commission said in fixing a lower rate than the rate which the company had in effect, that the Commission would not allow, in fixing a rate for the future, the company's expense in trying to prevent the rate being reduced to that reasonable level.

But there is not a case in this country, I am reasonably confident in asserting, where a company has attacked a rate in a court of equity and said that this statute or rate imposed by public authority is con-

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fiscatory, and has established its case, that the expense of getting rid of this unjust and oppressive regulation has not been treated as a part of the expense of doing business under conditions imposed upon it, just like any other condition imposed by public authority, it has then been included and has been pro rated in various cases. I could cite the cases to your Honor if you wish them. It has been pro rated over two, three, four and five years.

The Master: Taking five years, it would only be one-tenth of one per cent.

Mr. Ransom: One-tenth of one per cent.

47051 The Master: Let us pass to something else. One-tenth of one cent, you mean.

Mr. Ransom: One-tenth of one cent.

Mr. O'Brien: Did you say that was .54?

Mr. Ransom: .54, or fifty-four one hundredths.

The Master: About half a cent.

Mr. Ransom: Of course, the determination of the present cost of the gas sold by the Consolidated, as I have said, can be made up in either one of two ways. You can treat the price paid to other companies as a cost of gas, or you can treat it as though it was all one plant, and then you get the cost of manufacture and add to it the various items of taxes

47052 and replacements, and so on.

The point which I think ought briefly to be referred to in that connection is, for example, that such exhibits as 364, or Exhibits 205, 382, or 365, which are made up to show the revenues and expenses of the Consolidated Company, or the cost of production and distribution, and which treats gas obtained from other companies as gas purchased—those, of course, do not show, for example, all of the taxes in connection with property and operation incident to making gas sold to Consolidated consumers. For example, when you find in Exhibit 364 that the taxes

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of the Consolidated Gas Company against the gas property and gas business amount to .0675, or 6 3/4 cents, that is not all the taxes on property that is used in making this gas. There have been other taxes which are shown by the testimony of this case, and which are brought together in Exhibit 500 in this case, which show the amounts of these taxes—show a total amounting to 4.15 per thousand cubic feet of gas sold by the Consolidated.

The Master: Let us see that Exhibit 500 (taking exhibit).

Mr. Ransom: That is the taxes on the Astoria, $91,600 plus; on the part of the Mutual manufacturing plant and the taxes on the mains and tunnels amounting to 761,000 plus. 47053

Those taxes are paid directly by the Consolidated, they are paid indirectly by the Consolidated. If you look to the transferred gas vouchers covering that period shown in that exhibit, you will find there those taxes. The taxes are paid by the Consolidated as a part of the amount of money which it paid to these companies which make gas for it. If the Consolidated owned the Astoria plant, if the Consolidated had a plant where the Mutual plant is, of ten million cubic feet capacity, if the Consolidated owned the tunnels and the mains, there would be those same taxes, and they have to be taken into account if you followed the method which your Honor has indicated. 47055

Another item in that same category. Take the matter of general and miscellaneous expenses. The proof shows in this case, page 8731 of the record, that in addition to the general and miscellaneous expense of the Consolidated Company, excluding defensive emergency service, there is a slight amount of general miscellaneous expense of the Astoria Company incurred in making gas for the Consolidated. That

47056 is, certain things which would be done by the Consolidated if it owned the plant are done by the Astoria Company with its office staff and are charged as a part of the cost of the Astoria gas to the Consolidated Company. That amounts to .63 cents, or sixty-three one-hundredths of a cent. The amount shown in the exhibit, such exhibits as 364 and 365, show the general and miscellaneous expense of the Consolidated Company alone and are to that extent incomplete when you come to figure the total cost of manufacturing and distributing eighteen billion cubic feet of gas sold by the Consolidated Company.

47057 The item of renewals and replacements likewise. The Consolidated Company charges on this matter of renewals and replacements, its loss on property withdrawn from service, has been, under its actual experience, somewhere around 3 1 2 cents. The sum it sets aside to make provision for that, against which the losses are charged, is three cents. But that is not complete in itself; there are renewals and replacements of other property used in making and distributing gas for the Consolidated, amounting at least to half a cent a thousand.

For that reason, in Exhibit 501 for identification we have put in as a conservative figure on renewals

47058 and replacements on property used in the service of consumers of the Consolidated Gas Company, 3 1 2 cents. Because Exhibit 500 shows that included in charges paid by the Consolidated Company, for the use of properties of other companies, used in the manufacture and distribution of gas sold to the Consolidated consumers, there is $212,147.77 for renewals, repairs, and the like, amounting to 1.16 cents per thousand cubic feet of gas sold by the Consolidated.

The Master: Where will I find the items added to the 38.47, for instance, on Exhibit 364, for taxes, insurance and administration expense?

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Mr. Ransom: Of the Consolidated alone?

The Master: The Astoria in 1918 charged the Consolidated sixty odd cents, which was made up of 38.47 as the cost of gas, plus certain items for taxes, insurance and administration expense, etc. Where are those segregated and subdivided?

Mr. Ransom: Well, Exhibit 500—

The Master: Shows me taxes.

Mr. Ransom: Shows interest on investment.

The Master: I do not want that. The amount of taxes appears on that.

Mr. Ransom: And it shows taxes.

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The Master: Yes.

Mr. Ransom: And it shows the items of repairs, renewals, etc.

The Master: Putting it another way, you paid the Astoria Light, Heat & Power Company six million odd dollars, a little over six million dollars, in 1918. How much of that was for gas at 38.47, how much of it was for taxes, how much for insurance, how much for administration expenses, and how much for return on property? Is that anywhere in the record?

Mr. Ransom: Of course, Exhibits 485 and 486, which give the operating results of Astoria for the year 1918 and for eight months ending August 31st, 1919, respectively, show on the third sheet thereof the amount and the details of the general miscellaneous expenses of the Astoria Company. The item of insurance gives the total amount. The item of renewals and replacements gives the total amount. Of course, I call your Honor's attention on the fourth, fifth and sixth, the last column, cost per thousand cubic feet of gas made, that of course is the cost per thousand cubic feet of gas made by the Astoria.

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The Master: I understand.

Mr. Ransom: The cost per thousand cubic feet

47062 of gas sold by the Astoria, and that is not the cost in terms of cents per thousand sold by the Consolidated. You will find there the various items of general miscellaneous expense, renewals and taxes and miscellaneous. For example, on Exhibit 486, which is the August 31st, 1919, statement, you will find there, likewise, the general miscellaneous expenses for those eight months.

The Master: Where is the tax item? Taxes, I see you charge about six cents on the basis of $590,000.

Mr. Ransom: Well, that is six cents on the quan-
47063 tity made and sold by the Astoria.

The Master: Yes.

Mr. Ransom: But that would come to a different figure in terms of cents per thousand sold by the Consolidated.

The Master: Yes.

Mr. Ransom: Included in the price paid by the Consolidated, the amount paid by the Consolidated, the amount of money paid by the Consolidated for the use of the other properties of other companies which are used in the manufacture and distribution of gas sold to the complainant's consumers, as of October, 1919, as shown by Exhibit 500, there is 8.52,
47064 or a little over 8 1/2 cents, which represents interest paid by the Consolidated to these other companies as return on their investment, but as a part of the purchase price of gas received by the Consolidated.

The Master: Let me get this clear. Your Exhibit 364 shows that you include in your total cost of delivering gas to the consumer 6 3/4 cents per thousand cubic feet.

Mr. Ransom: For what?

The Master: For taxes.

Mr. Ransom: Yes.

The Master: Suppose you made all this gas on

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Manhattan Island that you have got over in Astoria, would not the result be the same, that the basic cost of the gas would have to be increased 6 3/4 cents for taxes and the additional items?

Mr. Ransom: No, because, you see, the more plant, the more taxes.

The Master: No, but the proportion would be the same, would it not?

Mr. Ransom: Because, you see, here is the situation: This 6 3/4 cents represents taxes on what? So far as property is concerned.

The Master: Yes.

Mr. Ransom: Property which makes eight billion out of nineteen billion sold, a distributing system which distributes between eighteen and nineteen billion. 47066

The Master: All of it, yes.

Mr. Ransom: The only way in which you can get the total cost of taxes, the total amount of the burdens which the public authorities put on the gas operations of this company, is to take the plant required, all of the plant required for making eighteen and a quarter billion cubic feet and the distributing of that quantity of gas.

The Master: The tax will not be any different, so far as the distribution system is concerned, will it? That tax that you include is the same as the entire sales? 47067

Mr. Ransom: Cents per thousand, yes.

The Master: And your gross income tax is the same. The only difference in the tax item would possibly be the tax upon the gas made elsewhere than on Manhattan Island; isn't that so?

Mr. Ransom: At 60,000,000 of capacity. In other words, you are dividing, using as the divisor eighteen billion plus.

The Master: No, what I am getting at is this:

47068 to make on Manhattan Island the amount of gas that you make—see?

Mr. Ransom: Yes.

The Master: And to distribute it all on Manhattan Island, costs you 6 3 4 cents for taxes.

Mr. Ransom: Yes.

The Master: According to your claim.

Mr. Ransom: Yes.

The Master: In order to find out what it would cost the consumer if you had made it all on Manhattan Island, you say I have got to add to it an additional tax item for the additional item of plant.

47069 Mr. Ransom: Well, suppose the value of your Manhattan plant, or the valuation, taking a rough figure, of your distributing system, to distribute your entire 18,000,000,000 of gas, its value was ten millions of dollars.

The Master: Yes.

Mr. Ransom: And that the Consolidated itself had manufacturing plant at which it made not quite half of the gas manufactured by it—820,000,000.

The Master: Yes.

Mr. Ransom: The tax item which appears in Exhibit 364 is figured on the operations and the properties which are involved in distributing all of the

47070 gas, the manufacturing part.

The Master: Yes.

Mr. Ransom: It does not include the taxes on 30,000,000 more which are not owned.

The Master: What I am trying to get at is this: This record shows somewhere the amount of taxes charged against the manufacturing plant, as distinguished from other taxes, does it not?

Mr. Ransom: Yes.

The Master: That represents a certain amount per thousand cubic feet in cents?

Mr. Ransom: Yes.

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The Master: Out of this 6 3/4 cents do you recall now, or will it be necessary for me to look it up, what percentage that is, or what part of it is attributable to the manufacturing plant itself, so that I can determine what it represents in cents per thousand cubic feet?

Mr. Ransom: I could not. I will give you that.

The Master: In other words, suppose I find the amount of taxes assessed against or chargeable against the manufacturing plant per thousand cubic feet of what you make on Manhattan is 4 1/2 cents out of the 6 3/4, is it not fair to take the actual expense of producing gas elsewhere and add 4 1/2 cents to it, as 47072
far as the consumer is concerned?

Mr. Clark: No, sir, it costs about $20 per thousand for gas at 14th and 42nd Streets.

The Master: Yes, that is a problem I was trying to work out in my own mind—how I was going to do that except on the basis of capacity. I figured finally I would have to take that on the basis of capacity, the taxes assessed against that, as to what it ought to produce, in showing the amount produced in cents per thousand cubic feet.

Mr. Ransom: It goes back to that same problem I endeavored to show your Honor a while ago. The test of the usefulness of plants, assuming that the 47073
company has to have reserve, as you must assume, the question of the usefulness of a plant is not to be computed, where it is a reserve plant, by taking the total expenses of that plant, including taxes assessed against it, and divided by the number of cubic feet which they make.

The Master: Of course not, I understand that, but take a coal gas plant on Manhattan Island capable of producing altogether nine or ten million cubic feet capacity, and divide that, or taking a basis of either 230 or 350, or 200 days, or whatever it may be, and arriving at what the total output should be.

47074 Mr. Ransom: But, your Honor, you have to figure here the 6.75. Let us say that half of that represents plant. The way that you have got that figure for plant has been by dividing the amount of taxes paid on plant in Manhattan, not by the total number of feet made and sold from Manhattan plants, but by your total 18,000,000,000 plus, in order to have a figure—

The Master: Mr. Woods in his estimate figured, my recollection is, 10 cents per thousand cubic feet for taxes.

Mr. Clark: One cent.

The Master: Ten cents plus. About ten cents.

47075 What I have been trying to do is to see if I can check up his figure in some way by actual operating results.

Mr. Ransom: You said you would not take his figure on taxes.

The Master: No, but in his exhibit for identification

Mr. Ransom: He said ten.

The Master: That figure appears there.

Mr. Ransom: Ten.

The Master: And I have been trying to locate in my own mind and from my recollection of the record such items of proof as would lead me to a conclusion as to what it ought to be. In other words, in arriving

47076 at the figure as to what it costs to make a thousand cubic feet of coal gas, as to how much I ought to add to it for taxes based upon record facts.

Mr. Ransom: Are not the record facts these—that the Consolidated pays a sum for taxes which is shown, for example for the year 1918, in Exhibit 364. That is paid directly. The figure for 1919 is, of course, different. Then there is paid indirectly so much more for taxes on account of gas operations. You add those two amounts, the gross amount alone in Exhibit 364 or Exhibit 367 for the twelve months ended October 31st, and the amount of taxes paid indirectly

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on the plant owned by other companies but used in the Consolidated service, those taxes as of October 31st, 1919, being shown in Exhibit 500.

The Master: I have got your point on that.

Mr. Ransom: And then divide by the total sold

The Master: But I wanted to see if I could not figure it out in some other way. You have two plants manufacturing water gas on Manhattan Island, 21st Street and 99th Street. In order to make the gas at those two stations you have to pay the City a certain amount of taxes on real estate, or on plants or whatever it is.

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Mr. Ransom: Yes.

The Master: That divided by the make at those stations indicates what your tax cost is in regard to make, does it not?

Mr. Ransom: In terms of make, so far as manufacturing plant is concerned.

The Master: Yes, you have 42nd Street and 14th Streets capable of producing about nine and a half million capacity, I think.

Mr. Ransom: And did produce nearly that last year.

The Master: Well, based upon my judgment as to the proper basis of computation, that would show a certain make throughout the year, would it not?

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Mr. Ransom: I think you get into a complication the moment you try to translate taxes into terms of make as distinguished from sales.

The Master: Well, follow me. Maybe I do, but I am trying to find out. Let us assume that the 14th and 42nd Street plants, if operated, ought to produce a certain amount of gas, per year. The taxes on those plants would be the same, would they not, on the value assessed?

Mr. Ransom: As a matter of fact, figured on their capacity, it would be the lowest of any, perhaps, in the Consolidated System.

47080 The Master: Whether it is low or high does not interest me right now. Query: If I find that two and a half cents would be the tax cost added to the material and labor cost and other items of production cost at those works, is that not the figure that I have got to add to the other elements of cost for coal gas? Do you get my point? Those plants are very high on it.

Mr. Ransom: That is, your idea is that you can work out a tax figure in terms of make and then apply that to the quantity of gas made at Astoria and at the Mutual plants, and add the result and figures of the
47081 amount of taxes shown in Exhibit 364.

The Master: Taking everything into consideration and trying to arrive at what it should or does actually cost to make gas that the consumer ought to pay for.

Mr. Ransom: Make and distribute.

The Master: Well, first I have got to make it, have I not?

Mr. Ransom: Yes.

The Master: In order to make it, as I said at the outset, I have to find my labor and material. Mr. Woods has given me his statement of the amount of material and labor it takes, and in connection with
47082 that I have your actual operating figures to consider, and I also have the testimony of Mr. Little and perhaps other testimony in the case as bearing on it. Suppose I start out with an analysis of this situation, and I find that you are right, that in order to make water gas on Manhattan Island it costs you 41.34 plus miscellaneous works expense and storage expense, then I get the cost in the holder, of gas made—is that not so?

Mr. Ransom: Yes.

The Master: Then suppose I find that in addition to that you have got to have insurance on your plant

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and other items of that character, including taxes, and that as to water gas the tax which you have got to pay on the plants which make this water gas in these quantities is X cents per thousand cubic feet, do I not add that to the cost of making the gas in your holder?

Mr. Ransom: Yes, but the point is this: I do not know of any way that you can determine—

The Master: I do not know whether there is a way: I am trying to find out if there is.

Mr. Ransom: Of course, you could find out what the real property taxes are on the Manhattan water gas plants in terms of cents per thousand cubic feet made, or in terms of cents per thousand cubic feet of 47084
capacity.

The Master: Yes.

Mr. Ransom: But the tax item is not all real property taxes.

The Master: I know that.

Mr. Ransom: And I do not know how you can determine it. I would be at a loss if I tried to do it myself—how can you take these other kinds of taxes, which are taxes equally against the gas operations and business of a company, and apportion those taxes between taxes against the process making gas and the process of distributing and selling gas.

The Master: I do not know whether I can or not. 47085

Mr. Ransom: I do not believe you can.

The Master: I am trying to find out. If I can get clearly in my mind the various items making up cost, including taxes and insurance, of gas made in the holders ready for distribution, and then get my mind on the figures of cost of distribution, and I can arrive at a more accurate figure or a more definite figure that way than I get the way you want me to figure it, I would rather do it my way. The result may be the same as your result, but it may be a little less and it may be a little more.

47086 Mr. Ransom: Isn't this true: Taxes, it seems to me, stand in a little different position, perhaps, than some other items of expenses: the company has no control over the amount of taxes?

The Master: I know that.

Mr. Ransom: Those things are rammed down our throats.

Recess.

Afternoon session.

47087 Mr. Ransom: On the point we were discussing when recess was taken, I have had a computation made in rough form, which may be interesting, although I personally doubt whether it will be helpful, but it bears on the point that was running in your Honor's mind, and it furnishes a confirmation in a rough way, of the point we were discussing. Take Exhibit 205, which is the Teele exhibit revenues and expenses for the year 1918, and you find that the total of the real estate taxes against the Consolidated plant and the like was $508,000; dividing that by the 8,000,000,000, which is the approximate quantity of

47088 gas made in those Consolidated plants and sold, you get taxes 6.35 cents, the real estate taxes alone. You take the $669,000 of taxes levied against the Astoria and Mutual manufacturing plants as shown by Exhibit 500, that is the taxes on those two plants not owned by the Consolidated, and that is properties used for making gas for the Consolidated, $669,000 shown by Exhibit 500, and divide that by the 10,000,000,000, which is the quantity of gas made in those plants and sold by Consolidated, and you get 6.6 cents. Adding the $508,000 real estate taxes against Consolidated, and the 6.69 cents against manufacturing plant not

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owned by the Consolidated but used in making gas for them, you get $1,177,000, and dividing that by the 18,000,000,000 sold by the Consolidated, and you get 6.4 cents. So there it is. On the Consolidated alone 6.35 cents; on the Astoria and the Mutual 6.6 cents, and on the Astoria, Mutual, Consolidated added, and divided by the total 6.4 cents. Now, if you take that $1,177,000, which is the real estate taxes against the Consolidated, the Astoria and the Mutual plants, and add to that the $708,000 shown by Exhibit 205 as the taxes against gas operations other than real estate taxes, you get a total of $1,885,000 which divided again by your 18,000,000,000 gives you 10.5 cents, 47090
which is exactly the figure, I believe, testified to by Mr. Carter, and is only .4 cents below the 1919 figure obtainable by adding the taxes paid by the Consolidated and the taxes paid on the manufacturing plant of these other companies as shown on Exhibit 500. And so, for whatever it is worth, that is submitted as a rather rough computation bearing upon the taxes in relation to—so far as it concerns real estate taxes on manufacturing plant capacity.

The Master: In those figures that you have just read, how much is charged for this real estate on corporations, that it is claimed is a duplication of the franchise tax?

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Mr. Ransom: Well, that would appear only in the $708,000.

The Master: Yes.

Mr. Ransom: The situation as to that I cannot give you in dollars.

Mr. Clark: $155,000 for 1918.

The Master: $155,000 for 1918?

Mr. Clark: Yes.

Mr. Ransom: What it amounts to is this: So far as the effect on the cost of making and distributing gas, if your Honor decides to leave out the real estate of

47092 corporations taxes and interest thereon, it amounts, on the quantity of gas sold by the Consolidated during the nominal year ended October 31, to 1.14 per thousand cubic feet of gas sold.

The Master: To give you the way my mind is operating, so far as possible, having in mind the rights of your company, and at the same time having in mind the anxiety that your company must have of having a result here when it is through that cannot be questioned, I want to eliminate any doubtful item. In other words, if I have a real doubt about this tax on the real estate of corporation being a duplication of
47093 the franchise tax, I am inclined to resolve the doubt against the company.

Mr. Ransom: May I say a word on that? So far as the real estate of corporations tax, I take it that this is the situation: Whether it is included or excluded, does not affect the outcome of this case. You could throw out every one of the items which I have heard the defendants seriously question in this case, and you still would not have a cost of manufacture and distribution as low as 80 cents. You could throw out all your general office expense and commercial expense.

The Master: That may be true, but the burden may
47094 be on the Court to determine what limitation shall be placed upon your company of a rate on condition of an injunction issuing.

Mr. Ransom: So far as the real estate of corporations situation, that is a tax which is assessed against this company, I agree with the view which your Honor takes, as you have expressed, that on its face it is a kind of a duplication of taxes. Both taxes ought not to be levied, I will admit. The company contests that tax. It does not believe it should be called upon to pay it. Unfortunately, in another position, in other tribunals, representatives of the taxing authorities of

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the State do not take the same position as the defendants' representatives in this case take, if the defendants' representatives in this case take any position at all.

That tax stands. It is assessed against this company the contest has not resulted in its eradication. If that contest is not successful, the company will be called upon to pay it. If the defendants had been able to produce here any stipulation of the Attorney General of the State and the taxing authorities who are represented in this suit, cancelling that tax, as it ought to be cancelled, we would not have shown it, but since it stands, and as long as they with their right hand 47096
try to keep it assessed against this company, I do not listen very much to them when with their left hand they say eliminate it.

Now, so far as the attitude of your Honor on that question, it is true that your Honor could make a finding here which would be a minimum, and which would eliminate all of the possibly controverted elements, and if you eliminate all of the possibly controverted elements, I do not believe that you would get a cost to manufacture and distribute as low as eighty cents, even aside from any return on the investment. This, however, is true. Some of these points which are involved in this case may some day, 47097
in some other proceedings than this, come before other tribunals. An adjudication by your Honor adverse to the representatives of the company with respect to these items, even though it was made on a theory of playing safe and giving an absolute minimum cost, would be used by these defendants' representatives in other tribunals. Now, you throw out this or that item on the ground that even after throwing it out the company were nevertheless entitled to have this statute suspended, and in some other tribunal, when the question is not that, but is a question of what the fair rate

47098 ought to be, which is not the question before your Honor, the determination made here for the purpose of getting a minimum case would be used against this company. I think that with respect to items of that sort, so far as the basis of this case is concerned, that your Honor ought to determine that according to your best judgment on the record as it stands, without regard to the fact that, as I see it, you may throw this or that out merely because the defendants contest it, or because there is some plausible argument in favor of throwing it out, even though you may throw it out and still have a result such as we believe we are
47099 entitled to here. In other words, I do not think that an item like real estate of corporations should be thrown out, or that an item like expense of rate case and the like should be thrown out unless your Honor from the whole situation is satisfied that they ought to be thrown out.

There is one other phase which I wish to call to your Honor's attention in this connection, which has a bearing upon some of the points we have referred to this morning, and that is with respect to the increase in respect to the relation of coal and water gas and their relative costs.

Your Honor has referred to the fact that in 1918
47100 the cost of coal gas at Astoria was less than the water gas cost at either Astoria or at the two plants of the Consolidated in Manhattan. There should be taken into account, however, in that connection, the fact that the cost of making coal gas has been going up very much more rapidly than the cost of making water gas, even to the extent that has been reflected in the testimony in this case. That is, even leaving out these operating results for the whole calendar year of 1919, which were furnished to the defendants but not received in evidence, for example, in 1918, Astoria coal gas was 33.96, with Astoria water 40.54, and the Con-

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solidated water gas 42.66. Now, in the eight months of 1919, the cost of Astoria coal gas had gone up to 47.32, an increase of nearly fourteen cents a thousand, whereas the cost of Astoria water gas had gone up from 40 to 45, or only five cents; and the cost of water gas made in the Manhattan plant had gone up only not quite six cents, or a small fraction over five for the eight months of 1919, or about five cents for the nominal year ended October 31, 1919.

In other words, the cost of making coal gas even under such proofs as there are in the record has been increasing at a much more rapid rate than the cost of making water gas, and as your Honor sees, the 47102
cost of coal gas at Astoria is, for the eight months of 1919, practically identical with the cost of water gas in the Manhattan plant or even the twelve months ended October 31, 1919.

One further point, of course, which should be taken into account in connection with these things which have been mentioned, is the miscellaneous operating revenue credits, as shown by Exhibit 364, which, of course are to be deducted, or are to be credited against what we may call the cost of manufacturing and distribution.

I think perhaps before I close I ought to refer to one further fact. There has been considerable ref- 47103
erence here with respect to the company's investment, to the fact that there were certain items appearing in these exhibits, Schedules A to G, there were certain items which had never been eliminated from service. When you run over the various items that were referred to during the case, including those which were brought out on the cross-examination of Mr. Carter regarding these schedules, you will find that at most there is $108,650 of property investments which is in those schedules, and which is an exhibit in the summary, which produces this $51,000,000 figure,

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Schedule G, which under the defendants' claim are not and were not used and useful actually as of December 31, 1918.

Reference was made in that connection to the East 15th Street property, the charges to the New Amsterdam holders, 1905 and 1906, $8,000. That is not in the rate base, and has not been in for years. That was charged against the New Amsterdam Company almost immediately.

Reference was made to the land or the plant on the site taken for the Willard Parker Hospital. That is still in the plant account, although taken by condem-
47105 nation by the City, but is not in what we may call the rate base. It is not in this Schedule G. It is not in the summary, and it is not in the rate base. This item of $91,360.49 is one of the items which is eliminated from the rate base, as you will see from an examination of the schedule, which I think is Schedule F, which shows the deduction.

The Master: I haven't got those schedules.

Mr. Ransom: Which shows the deductions to be made from the amount shown in the Schedule B. Now, the 18th Street plant, taken by the City in condemnation, was referred to. That was written out in 1914. So far as the collapsed holder at 21st Street,
47106 which was put in suspense account, pending the settlement of the suit which arose out of that, you remember that holder went to pieces during construction, that was written out in 1908, and has not been in since.

Now, one of the two items that are still in is the 21st Street oil gas benches, $50,000. Now, the situation with respect to that has been disclosed by the testimony in this case. Those oil benches at 21st Street have been used for making a high candle power oil gas sent to 14th Street by a special main for enriching the 14th Street coal gas. It is true that the proof

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does not show that they are now being used for that purpose. That is, I do not think the proof shows any operation of those oil gas benches for that purpose actually since 1916. The situation as to that is this: Those oil gas benches may at any time become necessary as long as this candle power standard continues, for the purpose of keeping up the candle power in this lower Manhattan district, and with the operation of the 14th Street plant to a point where, as was the case this last winter, it was making, the 14th Street and 42nd Street plants together were making several million cubic feet a day, running over eight million a day, at one time, and they may at any time be 47108
needed, and the company has never written them off because it was felt that they should be retained in anticipation, and as provision against possible candle power difficulties, and in view of the fact that there is only $50,000 involved, and that there is a statute of the kind that is on the statute books, it does not seem to me that the company would be warranted in writing them off merely for the sake of getting $50,000 out of the plant account. $50,000 is not an extensive provision against that situation, and I do not believe your Honor has any reason to disturb the judgment of the company, its officers and directors, that with only $50,000 involved it is better to keep 47109
them than to eliminate merely that $50,000.

Now, the reference to the retort house benches at 44th Street, $30,000. There were six of those benches which were there when the—they are still there—when the plant was taken in condemnation proceedings by the City, and they went, as the record shows, with the land in these condemnation proceedings. They are still in the plant account, because that condemnation proceeding unfortunately has not terminated, the company has not got its money, its loss on its account to its credit has not been ascertained and cannot be as-

47110 certained until the proceeding terminates, but this $30,000 item on account of these retort house benches is again an item which is eliminated from the rate base, and is one of those items shown on the Schedule I as a deduction from Schedule B.

Now, there is reference to the MacKenzie exhauster, shown in the original Rowland appraisal, and transferred from 63rd Street to 42nd Street. There were two different exhausters shown, as appears from an examination of the schedule. The $5,000 one was withdrawn in 1907, and it appears as a part of an item of $155,000 of withdrawals at that time, and the other
47111 one, the one which the defendants were referring to, the one transferred to 42nd Street, was withdrawn at 42nd Street, as also appears on the face of the exhibit. These are in no way in the rate base.

Now, at 63rd Street there were two dwelling houses which were referred to in the cross-examination of Mr. Carter. Two dwelling houses and a stable between 60th and 61st Street. An item of $12,500, which was, they claim, still left in the plant account. The situation was that one house was demolished in 1919 and written off at $12,500. It had been rented up to that time as a box factory, and the income therefrom properly credited. The stable which they re-
47112 ferred to has been gone for many years, and the house is not in the rate base.

The reference was made to the foundations of the purifier house at 65th Street. These were taken out when the holder was built at that point, written off in 1918, not in the rate base, the item of $12,000 on account of those foundations eliminated, written off.

Now, the other item which is in the rate base, which they raised, was the matter of the oil gas benches at 60th Street, which are both in the rate base and in the plant account, $58,650. The situation as to them is this: They are not used, and there is no claim that

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they are used in generating gas. Part of those oil gas benches were taken down, as was testified by Mr. Ulrich. The foundations of the parts that were taken down were used, as he testified, for the foundations of boilers, for which they made very excellent foundations. The other oil gas benches, those that were not taken down, are used for the storage of pipes and other materials. That is these big benches are a convenient thing, by putting iron bars across they make excellent storage places.

Mr. O'Brien: Cubby holes.

Mr. Ransom: Yes, cubby holes, very deep and very big. Now, $58,650 is still in the rate base, that is to say, for foundations for boilers and for storage facilities for pipe and the like. And those things are full or are kept filled. I doubt very much whether you could build foundations for boilers or storage facilities such as those furnished for $58,000. Certainly there would be no warrant for writing off any substantial part of $58,650, because if you examine what the foundations for boilers cost at other places, you would not find any disproportion. 47114

Now, there is reference made to the old retort house at 111th Street. This old retort house at 111th Street, which was a part of the land, on the land which was taken for Little Italy Park, $40,000. That cost in the rate base, and has not been in the property account since 1911. This old retort house, when its use for gas-generating purposes was discontinued, was changed first into a stable and then into a garage, and then part of it—its use as a stable was resumed. The retirement of this property was completed in 1911. That is only $40,000. 47115

There was reference made to five dwelling houses on 23rd Street, which were on one of the parcels of land there, I think it is Block 952, Lot 35, and one other lot, and were there at the time of the consolida-

47116 tion in 1884. Of these five dwelling houses, the record shows three were torn down in 1887 to build the engine and exhauster house, which is now on that lot, Lot 35 of Block 952. The situation was that these were very old houses, and according to the appraisal the houses themselves have not been considered to add any value to the property, only $10,500 is possibly involved. The other two houses are not in the rate base at all, they are houses which have been kept in a condition suitable for renting, and they are rented, and the land on which they stand is not in any way included in the rate base, so that of all the items re-
47117 ferred to as representing property shown in these Schedules A to G, and as representing property which was in the plant account but should not be in the rate base, there is only $108,000—the 21st Street oil gas benches and the former oil gas benches at 99th Street.

I think I have covered all that I need to at this time. I have not undertaken to cover nearly the whole case, at all, of course, but upon the whole situation we are confident that the complainant is entitled to judgment.

The Master: Now, Mr. Chambers, I will hear anything you have to say as to what you contend the record shows as to the proof tendered by the complainant, or as to what the record shows as to the proof
47118 tendered by the defendants. I do not want to hear quotations from what I said in the course of the trial, time is too valuable for that.

Mr. Chambers: I wish you would go back and read them all.

The Master: If you proceed to read any of them, I will close your discussion; I do not want to hear it, it is a waste of time.

Mr. Chambers: As I said the other day, with a record consisting now of 15389 pages of testimony, it is impossible, I find, in the space of time allotted, to properly prepare a detailed summary of the testimony,

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but it seems to me that Judge Ransom has demonstrated quite conclusively to me that he not only has not proved a rate base in this case, but neither has he proved by competent testimony or by any other testimony exactly what it costs this company, or what it did cost this company in 1918 or any other year to make gas, because if you take Woods' hypothetical table—and by the way, he did admit it was hypothetical, Exhibit 353 for identification, your Honor said you would not take the prices, and you excluded cost of distribution, a little item of 19 cents a thousand cubic feet, and you excluded entirely taxes, and in order to bolster up and complete any kind of a figure 47120
for making gas you have to turn to Teele's Exhibit 205 and his other exhibits, and I am going to show you that 205 hasn't any probative force at all, and it is not proof of the facts set forth therein, and if it were it is full of defects and has not been connected up. And that is true also of Woods' exhibit, and moreover, Woods' Exhibit 353 is impeached and challenged by the experience of the company itself, as we showed you the other day, in one or two details.

It does not take 32.50 pounds of coal to make a thousand feet of gas, as they found out themselves, so that is challenged, not only in that particular, but in others. 47121

Our motion to dismiss the complaint, of course, covers all the essential elements and bears out exactly what we claim now at the close of the whole case. Complainant started out by raising the issue in the complaint that it had not enjoyed a return during the entire time that the statute has been in force and effect, and that was the issue during the trial. Your Honor will remember from time to time we tried to persuade Judge Ransom to tell us whether he was going to limit his proof to 1918, or whether he was going back, and he sat on the fence throughout the trial and

47122 he never, so far as I have been able to find from the record, specifically admitted one way or the other whether he would stand on 1918, or whether he would go back to 1906, and your Honor was not able to make him say.

Now, just to take up that proposition of the issue raised by the complaint that complainant has not enjoyed a fair return since this act has been in force, I want to call your Honor's attention to a table which has been prepared by the Public Service Commission, which shows, among other things, with the investment at Astoria included, and to which proposition I do not
47123 subscribe, but for the purposes of this argument we will take it, it shows that this company has enjoyed a return from 1906 to 1918, inclusive, in excess of six per cent of $25,845,513, and did enjoy, during 1918, a return in excess of six per cent of over $201,922, and that—

Mr. Ransom: What exhibit is that?

Mr. Chambers: It is a table made up from exhibits: it is not an exhibit. And if you will go to work and figure out the Astoria investment in accordance with the amount of gas made over there, and Woods says they were not running to their full capacity, that $25,000,000 will jump up to over $29,000,000. Now,
47124 at the outset you will never be able to convince any Court hereafter, I will venture to say, that a company that has built up a surplus of a return over six per cent of substantially $29,000,000 is entitled at the present time to have the statute declared confiscatory.

Now, in the beginning if you will keep in mind, and I think it is important, that here is a company asking to have you declare unconstitutional this 1906 statute, and it appears, and it is a conservative figure in my judgment, that they have enjoyed a return in excess of 6 per cent of over $29,000,000. Now, something is wrong somewhere. It is apparent to me that their

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case is built upon sand and they haven't any cause for complaint at the present time.

The Master: Well, suppose your table is built on sand?

Mr. Chambers: Well, they are not; they have not been challenged.

Mr. Ransom: It has not been put in evidence.

Mr. Chambers: Sure they are.

The Master: Let me see it, will you?

Mr. Chambers: They have not challenged those figures.

Mr. Ransom: Haven't seen them.

Mr. Chambers: Well, we offered them in evidence, 47126
and we will offer it now. We offered the tables, and you objected to them, and the Master said he would take them.

Mr. Hayward: The Master did say we could compile from the exhibits anything in a definite form and that this was the very time and the very place where you wanted it offered in that shape.

The Master: There is no argument about it.

Mr. Hayward: Clearly, then, within our rights and your instructions.

The Master: Yes, that is correct.

Mr. Chambers: Now, in a court of equity, if the Court please, a company which has a record like that, 47127
is not entitled to have the rule stretched beyond all reasonable doubt to help them out to destroy a statute here which has worked to their great advantage, and which a half a million people in the city are entitled to have remain on the statute books unless they can show, and that is the next point I am going to take up, that beyond any reasonable doubt or beyond any rational doubt they are not enjoying at the present time a fair return.

Now, the rule is, as has been alluded to from time to time in the course of the trial, that complainant

47128 "must show in this case that it has not enjoyed a fair return upon the value of its property invested in the gas business, beyond any reasonable doubt." And that rule was stated from time to time in the various cases.

In the Court of Appeals, in the recent case of the Municipal Gas Company of Albany, Judge Cardozo said that bills to annul rates have been dismissed without prejudice while the outcome remained uncertain, and in the Wilcox case they said that there must be a fair return upon the reasonable value of the property, but the case must be a clear one, and that the
47129 complainant must sustain the burden cast upon it of showing beyond any just or fair doubt that the acts of the legislature are in fact confiscatory. And the same rule was reiterated in the City of Knoxville case, and in the Minnesota rate cases. And in the Minnesota rate cases the Court said, "It is fundamental that the general power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases." The same was said in the Des Moines case and the San Diego land case. And so, summarized, the rule which you must invoke here is that the complainant must establish beyond any just or fair doubt that this act is in fact confiscatory. And
47130 you stated the rule during the course of the trial in these words, that there is not the slightest use in the world—

The Master (interrupting): I told you not to quote what I said.

Mr. Chambers: Well, I am not quoting, but you recognized the rule at folio 4494. Now, let us see—

The Master: Are you going to give me these summaries of tables that you have prepared, summarizing testimony in connection with exhibits?

Mr. Chambers: You mean the ones I offered in evidence?

47131

The Master: The ones I refused to take, like this one here.

Mr. Chambers: Yes, I will give you the ones you refused to take and the ones that you took, in order, all bound in books.

Now, it has been said in some rate cases recently that these are abnormal times, and that it would not be fair to judge the case, any case, any rate case, any case like this, on prices prevailing in 1918 and 1919, these being abnormal years.

The Master: Who said that?

Mr. Chambers: That was said in the—I will quote it for you.

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The Master: No, but who said it? And was there any evidence before the Judge who said it that although the prices had gotten to a very high level that perhaps we had reached a normal high level? Of course, if this is a mere temporary, abnormal period, you are right in your argument, but if I find as a fact that we have reached a high level, which is going to continue indefinitely, of course your argument falls to the ground.

Mr. Chambers: Well, that would not make it so if you found it so.

The Master: It would make it so for the time being, when I find it. I am prepared to say now, Mr. Chambers, that I shall find as a fact, based on the record in this case, that although the prices of material and labor have gotten to a very high point, that it is my conclusion of fact that that high level will remain for some time to come, and that there isn't any evidence in this case which leads me to believe that that level will be substantially lower for the next three years, in any event, and perhaps not in five.

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Mr. Chambers: Well, that is a guess.

The Master: Why, most conclusions of fact as to what will happen in the future must, in the nature

47134 of things, be a guess, but it is my judgment based upon what I have heard in this case.

Mr. Chambers: You cannot destroy the statute entirely until—

The Master: That is another question.

Mr. Chambers: Even if that were so, until they showed that that situation continued so long that they were not enjoying a fair return, or so long that there was not any doubt left in anybody's mind but that this statute was taking away their property without due process of law. That has not occurred yet.

The Master: I have not proceeded so far as to say
47135 that I have reached a conclusion that these prices are confiscatory, or that I disagree with you as to the other points that you raise, but what I wanted to make clear to you now, so that you don't spend any more time on it than you think is necessary in view of my statement, I am satisfied beyond a shadow of a doubt—

Mr. Chambers (interrupting): Well, then, all that would mean would be for you to say at the end of your decision that you dismiss the case without prejudice to the bringing of a new suit or renewing—

The Master (interrupting): I don't know what that means.

47136 Mr. Chambers: What action—or the renewing or opening up of the case at the foot of the judgment.

The Master: I don't know what that means, but it means this to me, that I shall find as a fact that this company won't, in all likelihood, buy its coal or its oil or its labor that it necessarily needs in the making of gas, for less within the next five years than it has paid in 1918 or 1919.

Mr. Chambers: My point being that the times being abnormal, that you cannot now declare the statute unconstitutional because of that, but that may be—that

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may be—the basis for saying to the complainant the complaint should be dismissed now, but you may come in at the foot of this judgment at some future time.

The Master: You will get further in your argument with me, if you have a basis for it by pointing out that I have no right to reach the conclusion that I have indicated upon the record in this case.

Mr. Chambers: That is what I am going to do.

The Master: I am indicating to you that upon the record as I understand it in this case, I am disposed to find as a fact that this company will not buy its labor or material cheaper within the next five years than it is paying today. If you do not think the evi- 47138
dence justifies that, I would like to have you point it out.

Mr. Chambers: A minute ago I promised to tell you where it had been said that we were living in unusual and abnormal times.

The Master: Yes.

Mr. Chambers: In that Pacific Power & Light Company case, in the Public Service Commission—

The Master: Yes.

Mr. Chambers (continuing): The Commission said, "We are living in unusual times."

The Master: Well, we were.

Mr. Chambers: "All are called upon to forego many 47139
pre-war privileges and luxuries."

The Master: Well, we are, and we will be for the next five years.

Mr. Chambers: "And the Commission believes that the stockholders of the company should bear a portion of the increased burdens incident to the war."

The Master: Well, that is another matter.

Mr. Ransom: What year was that?

Mr. Chambers: That was in 1918, they were speaking of.

47140 The Master: Considered in the light of experience in the last twenty years, we will be in abnormal times for the next five years, in my judgment.

Mr. Chambers: Now, there has been no witness called in this case who has testified with any degree of positiveness that the present prices will continue, or that there might not be a recession in prices. In fact, Mr. Gawtry, I think it was, would not, when cross-examined—he said he would not want to say—he said that in words or substance, that prices might fall suddenly, and that that might happen very soon, in the immediate future.

47141 You will further recall it appeared by the testimony that cement was no higher now than it was in 1917, that pighead was lower in 1918 than it was in 1917; that wrought iron pipe was lower in 1918 than it was in 1917; that steel was lower in 1918 than it was in 1917, and that gas meters had remained the same, and it appears from the testimony, incompetent as it may be, that oil, that the last contract made for oil that appears here in the record by this company, was lower than it was previous to that. In other words the last sale on oil in this case indicates that the tendency is down. Whether it is true or not, that is the testimony before you. Now, that speaks louder

47142 than any guess that Mr. Addicks or Mr. Gawtry may make, and—

The Master (interrupting): Or that Mr. Little may make.

Mr. Chambers: Or that Mr. Little may make, or that anybody may make. There is the undisputed proof right there, that it is down. Now, counsel did not see fit to go into the last two months, or the last few months of 1919 on prices. If the situation bore out his contention that prices had not reached their peak, and that the tendency was up, I cannot

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see why he did not open up his case and take advantage of the opportunity granted by the Master and produce the testimony, even though it took a little more time. It would not have taken much time to have opened it up to that extent.

Mr. Ransom, if I heard him right, did not say anything about a rate base, or at least he did not tell your Honor what was his rate base, and to this day I do not know that he has any that he could connect up. So what I have to say I will limit largely to the cost of making and distributing gas in 1918. That seems to be the keynote of what he was talking about, and seems to be the factor that is gov- 47144
erning the operation of the Master's mind. Now, in Teele's Exhibit 205, which is based largely upon the books of the company and upon the vouchers underlying the books, you will recall that while Teele was on the stand you curtailed and limited his cross-examination because you said that you would not take Teele's tabulation as any proof of the fact, all you would do, you said you would take it, but you stopped my cross-examination, you said you would take Teele's tabulation as a tabulation of the books and vouchers, and you suggested that there would have to be some other proof other than that before you would feel you were bound by it.

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The Master: Well, all Mr. Teele's testimony was offered for was a tabulation.

Mr. Chambers: Yes.

The Master: That is all I am taking it as.

Mr. Chambers: Now, if complainant is obliged, as it is, to bolster up Woods' hypothetical cost of making gas by Teele's taxes and Teele's cost of distribution, then they have not proved a case. I am just going to point out in a few minutes, some vital factors, which I think enter into the proposition that they have not proved a case on the cost of making and

47146 distributing gas, much less to say that they have not proved the case on any other phase of the issues raised by the complainant.

Now, taxes was excluded from Woods' hypothetical cost of making gas, and by the way he spoke as of October 16, 1919, and if you remember I cross-examined him and he says they were using more men at that particular time, more men entered into the cost of making gas, I think he would say, than any other time except 1918, and I asked him why that was, and one reason he gave was that they were painting the holders. Now, it is significant that at the
47147 very time Woods was giving his testimony on the witness stand, to wit, on October 16, 1919, this company had hired a small army of men to go around and paint these holders. And he was speaking of that very time, October 19, 1919.

And another thing, Woods admitted that his cost of making gas and the number of men he included in the cost of making gas had climbed up largely because, he said, they had a lot of men around guarding the plant, that it was war time, and they needed them. Now, I do not think that ought to enter into the situation at the present time, because that is an abnormal and an unusual situation. In Teele's exhibit
47148 on taxes, which was excluded in Woods' 353, and without Teele's there is no proof in here, no competent proof as to how much it cost, or how much per M it takes to pay the taxes on a plant.

Now, let's see if Teele's is any good. In the first place Teele included the item of $155,122.20 about which you asked a few minutes ago, for real estate of corporations for the year 1918. Now, certainly if there was not a doubt in the Master's mind about that item being competent, I would say a good deal more than I am going to say, but I think there is a doubt. We proved conclusively here that that is a

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duplication tax, that in previous years it had been cancelled, and that there is no reasonable likelihood at all that this company will be obliged to make that payment.

The Master: Well, do you concede it is a duplication?

Mr. Chambers: Well, why do I have to concede that it is a duplication?

The Master: Well, you say it is conclusively proved. Now, do you concede it?

Mr. Chambers: I think it is.

The Master: I don't know of anybody that I can ask any more directly.

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Mr. Chambers: I don't want to concede it to the extent of binding anybody.

The Master: Well, the state has got to be bound one way or another.

Mr. O'Brien: No, the state don't have anything to do with that tax, that is a city tax.

The Master: I want to get Mr. Chambers to place himself on record.

Mr. Chambers: Yes, and I will concede it for the purpose of this question of going into the cost of making gas, for the purposes of this case, I will concede it, and I think it is a duplication. I do not claim to be an expert on taxes, but it was cancelled heretofore, you remember that.

47151

The Master: Oh, yes.

Mr. Chambers: I mean other years.

The Master: Yes.

Mr. Chambers: And the witness called testified and told you under oath that it included substantially the very same things, that it did include the very same things that went into the item special franchises $384,000. Now, there is a substantial amount, and Teele had that in all his other exhibits, you will remember, for other years. There is a substantial

47152 amount of taxes that goes out. Now, the complainant has not, with that out—perhaps your Honor can sit down and figure out the remainder of the taxes. But I am going to show you there are a lot more that go out, and it is so confusing, and so extensive, that it throws doubt upon the whole question of taxes.

The Master: Well, why is it confusing? If I take out $155,000, I reduce the amount of taxes to that amount. How is that confusing?

Mr. Chambers: I will show you how it is confusing. Take the taxes on real estate for that year, or any other year that we are considering—

47153 Teele—and by the way, all Teele ever pretended to do—maybe he won't like it, but I am going to say it—all he did was to take the figures from the books. Teele grabbed from the books every figure that he could find that said "taxes." He took them off and put them in here whenever he saw taxes, he saw red and put them down, and they are all in here.

Where is there any testimony in this case of the exclusion of taxes on such pieces of property which I think the Master will have to find are not used and useful? Certainly, with the testimony in this case as it now stands, you are not going to take every piece of real property included in Exhibit 178—

47154 The Master: Let me ask you, hasn't he in Schedule 14-B shown the taxes charged against each particular parcel of property?

Mr. Chambers: Yes, he has.

The Master: So that I have all of the taxes, and I also have his version of what portion of it ought to be apportioned.

Mr. Chambers: Yes, and I am glad you asked me that. Take that piece of property known as the Kingsbridge holder, upon which is a tennis court, he has got the tax for the whole property, and Mr. Carter admitted while he was on the stand, on one of the many

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occasions that he enlightened us by his testimony, Mr. Carter admitted that they had offered for sale a portion of that lot, while Teele has given you the taxes for that entire piece of property. How are you going to sit down and say what portion of that tax is attributable to that portion of that block or lot which you are going to exclude in the making of gas for 1918, or any other year? By the way, that one that I was just speaking about, so it will get in the record, is Block 3230, Lot 1, the Kingsbridge holder.

The Master: There cannot be any question about the special franchise tax, is there?

Mr. Clark: Yes, the amount of that. 47156

Mr. Chambers: Do you want me to digress and talk about that? I had a note here to speak about that.

The Master: I think you will help me more by taking Schedule 14 and telling me what you say about gross earning tax and the apportionment of it, and New York City tax and so on.

Mr. Chambers: I have said all I want to say about real estate of corporations unless you ask me something.

The Master: I understand your point. Why not take gross earnings first? The gross earnings tax he says is $117,270.90, he says that that is the amount in 47157
bulk and takes off $38,000 and carries out a total of $78,000. Is there any question about that?

Mr. Chambers: I was not prepared this minute to delve into the $117,270.

The Master: He based that on the apportionment shown in 14-A.

Mr. Chambers: Let us take that. Let me state what I have in mind about that gross earnings, without saying anything as to the amount at this moment, which I do not concede as correct. If I remember right, that tax was paid, I think that is correct. The

47158 point about gross earnings tax is this: Teele apportioned that between the gas business and the non-gas business.

The Master: As shown on Schedule 14-A.

Mr. Chambers: You said when Teele was on the stand, and when you curtailed my cross-examination and would not let me go into it, you said you would not take Teele's testimony on judgment and discretion in apportionment.

The Master: No.

Mr. Chambers: He apportioned it, how are you going to apportion it? How is there any evidence upon
47159 which you are going to make a finding that so much of it is gas and so much of it is non-gas? I say there isn't any evidence, and there is doubt on the whole item.

The Master: Isn't there evidence that out of the gross income of 23,000,000, 7,000,000 of it came from the items shown on Schedule 14-A? Isn't there evidence in the case that that was the company's income?

Mr. Chambers: The trouble with 14-A is that we challenge the whole of it, and there isn't any proof of many of these things, like light oil recovery, residuals sold, insurance fund, except Teele's taking the figures from the books.

47160 The Master: Suppose I agree with Mr. Teele's theory of apportionment, I can use those same figures, can't I?

Mr. Chambers: No, because you can't use this 14-A, because there is no proof of any of the items, that they are correct.

The Master: What items?

Mr. Chambers: Substantially all. Bond income, where is there any proof of bond income?

The Master: In the books.

Mr. Chambers: I know, but you said they would not take the books as proof of the fact unless they offered some additional proofs.

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The Master: Perhaps I have additional proof in this record. I am asking you this: Assuming that I am satisfied from the evidence in the case that of the total income during the year ending October 31, 1918, there was received the item shown in Column 1 of the Teele exhibit applicable to the gas business, and in Item 2, the item not applicable to the gas business, haven't I the right to apportion this gross income tax on the basis referred to by Mr. Teele? If that is not a fair basis I would like to have you say what is a fair basis. If I have all the items isn't that a fair apportionment.

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Mr. Chambers: His fraction would be about right, I think.

The Master: But you say there isn't any proof that these were the items?

Mr. Chambers: Yes, I say there is no competent proof as to many of them, that you cannot say that the interest on bank balances was so much; you cannot say that the interest on Liberty Bonds was so much, you cannot say that light oil recovery was so much or that wharfage was so much or miscellaneous rent revenue was so much, or that dividends received were so much, because there isn't any proof, the dividends may be more than that.

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You remember that item of joint gas revenue comes in, and there I tried to show you that it was Woods who testified upon the stand that the arrangement between the Central Union and Northern Union in 1910 had not been changed from that time to the present, and that there should be a readjustment, and that instead of being $120,000, maybe it ought to be $250,000. He said that mains had gone up, and yet they were charging the old rental in 1918 to these other companies that they were charging in 1910.

You see, what I am getting at is this, while probably they could have proved some of these things by common-law proof, still they have not done it, and there

47164 is so much doubt—you know that in the presentation of a case the defendants have a right to point out that there is doubt about certain things, and where you are declaring a statute unconstitutional that has been in force since 1906, where we have shown you that the excess over 6% return is over $29,000,000—I say you ought to hesitate when we show there is doubt about these items.

The Master: But you have not shown me that yet.

Mr. Chambers: I don't think you will have any hesitation in finding that it is so.

47165 The Master: Well, I haven't seen it yet.

Mr. Chambers: That is about all I care to say at the present time, in the very short time that is allowed counsel to sum up.

The Master: No, you can have all week if you want to.

Mr. Chambers: I am frank to say that I would like to take a week about this case if I had ample opportunity to prepare.

The Master: How about the special franchise tax?

Mr. Chambers: The special franchise tax has not been paid, if I remember correctly. Is that your memory?

47166 The Master: My memory is not clear.

Mr. Chambers: I will say it has not been paid, and Teele admitted it.

The Master: How about that, Judge Ransom?

Mr. Ransom: All paid.

Mr. Chambers: My recollection is that it has not been paid, all of it.

Mr. Clark: They have paid what they think they will have to pay.

Mr. Chambers: That is what I mean, they have tendered some payment, but it has not all been paid.

Mr. Ransom: The voucher number is in the record.

47167

Mr. Chambers: I mean the amount of $384,297.90 has not been paid? What has been paid? Will the Master ask him?

Mr. Ransom: I will give you that figure in a few moments.

Mr. Chambers: All right, let us have it.

Mr. Ransom: The proof is that in 1919, Mr. Teele stated it was paid in full. The 1918 is a little different, there are a few dollars, I can't tell you now at the moment just how much of the 1918 that is still in contest.

Mr. Chambers: On the question of special franchise taxes, it appears in this case by the books and 47168
other testimony, most of it is incompetent, but it appears that this company is always—I think I am right in asserting—has always settled special franchise taxes for less than the amount of them, or substantially always.

Mr. Ransom: That is not true.

Mr. Hayward: Just a minute, Mr. Chambers, I guess these are the figures. They paid $253,000. The few dollars that they did not pay amount to only about $130,000. That is the few dollars that he speaks of that they didn't pay.

Mr. Ransom: That is according to what economist?

Mr. Clark: According to your own books. 47169

Mr. Chambers: I am obliged to Colonel Hayward. It is shown by Exhibit AA-256.

Mr. Ransom: Economist Gottlieb.

Mr. Clark: You can't find it in your books, but we can.

Mr. Ransom: In the early years, when the special franchise was on a high basis, it usually was settled by the State on less than the amount assessed.

The Master: According to Exhibit AA-256, the real estate taxes for 1918 amounted to $468,964.80 accrual, the amount actually paid was $536,391.74.

47170

Mr. Chambers: I am glad you mention that. Teele says they paid $539,272.90.

The Master: On special franchise, the exhibit states the accrual at $384,297.90, and the payment of $253,256.78.

Mr. Chambers: That is what I meant. I meant that they paid probably what they will be able to make a settlement for. Every little while they make a settlement, and it has always been in an amount quite a good deal less than the taxes as laid by the State Board of Tax Commissioners. You have pointed out there a little mistake of Teele's on real

47171 estate.

The Master: I don't know whether it is Teele's mistake or not.

Mr. Ransom: There are many errors made by Gottlieb.

The Master: I am not going to assume any mistake made by Mr. Teele.

Mr. Chambers: Well, you have shown a difference there. Of course that is our exhibit.

Now, the personal tax, if I remember right, the Master stated, you announced you would not take that.

The Master: Why?

47172 Mr. Chambers: That is at folio 9592 to 9610.

The Master: I said I would not take it, or that I was disposed against it?

Mr. Chambers: That you would exclude it.

The Master: Absolutely, or that I said I must?

Mr. Chambers: No, you said you would exclude it, said you would not allow it, at folio 9610. That is $23,300.

Mr. Ransom: The Master certainly did not say at folio 9610 that he was going to exclude it.

Mr. Clark: There was no proof as to the division of personal property between gas and non-gas.

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Mr. Ransom: It shows right on the voucher itself in evidence, Exhibit 375 in evidence.

Mr. Clark: That is for 1916.

Mr. Chambers: It does not show on that bill what it was for, Teele admitted it. Look at folios 9606 to 9614.

The Master: I see where I said what you refer to. That is simply argument. I was simply illustrating. I said, assume that I take the tabulation in, and when we come to summarizing the evidence you point out, etc., and when I said, "Very well, I am going to exclude it for purposes of computation." Why, it is simply discussion. I was trying to get Mr. Cham- 47174
bers to go ahead and not waste a million dollars' worth of time on a $23,000 item. I will have to look at it.

Mr. Chambers: From that you are satisfied, I suppose, and there was no other proof on personal property taxes. I think you are satisfied from that that the tax voucher did not show what property it was on, whether it was against the bonds or stocks or what not. There is doubt about it, if the Master please.

The Master: If I do what I indicated, I will probably throw out a doubtful item like this. I don't know whether it is doubtful or not, I will look at it. One thing is sure, that in a case of this kind, I 47175
am not going to spend the rest of my life fussing around a $23,000 item.

Mr. Chambers: That is just the point, where we show you that there is doubt about it—and they relied entirely on Teele—you can rest assured that if they could have proven that this personal tax was against something used in gas making, on gas making property, they would have proved it, and they didn't prove it. That is one of my points running all through, that they tried to prove their whole case by Teele.

47176 and he couldn't make good, and he said he couldn't and the Master said he couldn't, and I say he couldn't.

The Master: Then that settled it.

Mr. Chambers: I think the gallery will say he couldn't.

The Master: If you said he couldn't, that settles it.

Mr. Chambers: Now, the capital tax account, Schedule 14-C, Teele attempted to apportion the tax between gas and non-gas, 33 and 66.

The Master: What do you say about it?

Mr. Chambers: I say in the first place that you
47177 said you would not take Teele's judgment on the apportionment.

The Master: What judgment do you want me to exercise on it? What do you say it ought to be?

Mr. Chambers: I think we stand right on the fact that they have not proved it.

The Master: They have not proved what?

Mr. Chambers: What part is applicable to gas and what to non-gas, so you can base a finding.

The Master: What could they prove about this that is not in the record?

Mr. Chambers: They could show your Honor just how they computed it, how they did it, and upon what
47178 it was based, by competent proof. Teele didn't know anything about it any more than that he found a tax there, and he sat down and said, "So much goes to gas and so much to non-gas." That is the trouble. Teele was not competent to say how much of that property that was taxed was gas and how much non-gas.

Mr. Ransom: He took it absolutely from the books.

The Master: I am competent to say, am I not?

Mr. Chambers: I don't know. I have my doubts—I don't say you are not competent, but I doubt whether you have enough proof before you to do it.

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The Master: That is another question. I have the power, haven't I?

Mr. Chambers: I think you have.

The Master: The capital stock tax could not all be allowed them, could it?

Mr. Chambers: No.

Mr. Ransom: This was not an apportionment by Teele. The capital stock tax is in Teele's exhibit exactly as were the book apportionments.

The Master: That does not change the situation. The mere fact that your company sets it up, or that Teele set it up, does not bind the Master.

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Mr. Ransom: But Teele did not apportion it.

Mr. Chambers: Who did? You didn't have anybody here who said that the apportionment was correct.

Mr. Ransom: If you will look at Voucher 16505, folio 9619 of the record—

Mr. Chambers: I can't look at it when I haven't it here, can I?

The Master: Suppose that voucher shows a basis of one-third and two-thirds as figured by the company, any basis, would you say that I have not the right, if I agree with that conclusion or judgment of the company, to adjust it on that basis?

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Mr. Chambers: I am frank to say just at this minute that I cannot remember exactly what that tax is.

The Master: Capital stock tax.

Mr. Chambers: No, I can't remember.

The Master: That is a tax imposed by the Federal Government on the value of the outstanding capital stock July 1st each year.

Mr. Chambers: If that is so, that tax ought to be excluded entirely.

The Master: Why? Part of the capital stock surely is used for the gas operating business.

47182 Mr. Chambers: I know, but why should the gas consumers pay a tax which is imposed against the stockholders? It is a tax really which ought to lie against the stockholders.

The Master: No, if we have a corporation to do business it cannot be done unless it has stock, and that stock is taxable. It is not based on earnings or profits, it is based on the fact that there is a capital stock outstanding.

Mr. Ransom: Keep in mind that the 1918 situation and the 1919 situation as to the capital stock tax was a little different. The statute as it stood with
47183 regard to the 1918 tax levied it at 50 cents per thousand for each thousand, with an exemption of 99,000. For the 1919 taxes it had been amended by the Revenue Act of 1918, approved February 24, 1919, making it a tax of $1.00 on the fair average value of its capital stock in excess of $5,000.

Mr. Chambers: Well, I am not so sure that that is not in the same situation that the Federal Income Tax is.

The Master: Well, I am not.

Mr. Chambers: Now, the interest on unpaid taxes, New York City.

The Master: I want to hear you about that; you
47184 say they ought to pay their taxes?

Mr. Chambers: Yes.

The Master: And not have interest charges.

Mr. Chambers: I cannot say that as to all, the real estate of corporations they will never have to pay.

The Master: Here is the situation: You can't eat your cake and have it. Of course, this company could pay its taxes and not have interest charges, or it could contest these taxes and pay interest. It has to do one or the other.

Mr. Chambers: They could do what they did in

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1918, pay a large portion of the tax, that they think is right, and then let the interest run against the balance.

The Master: Why isn't that a proper thing to do?

Mr. Ransom: It is just what they did do.

Mr. Chambers: I don't say that that is proper. I think they should pay their taxes.

The Master: It would cost the consumers more that way.

Mr. Chambers: Listen to me just a minute, please. In the settlements that they make—we showed you a minute ago that every four or five years, they hang 47186
up these taxes, and every four or five or six years they go in and settle them for a largely reduced amount.

The Master: And save money.

Mr. Chambers: I am not so sure in that settlement that they did not rid themselves of the interest entirely.

The Master: I am just taking for 1918 operations. Take 1918.

Mr. Chambers: When they settled that tax, they paid a substantial part of it, when they settle that tax they will probably say to Martin Saxe, who is looking after that—they will both agree and there will 47187
be a settlement, and they will eliminate the question of interest. Saxe is anxious to get a substantial amount, and the company is anxious to get a reduction, and in settling a thing like that the interest goes in and is swallowed up by the settlement, and loses its identity in the settlement.

The Master: If in theory this company is justified in contesting a tax, do you say it is improper to set up interest against it?

Mr. Chambers: If in the settlement they rid themselves of that interest, certainly it should not be

47188 charged. It is a substantial amount, $39,000. I will venture to assert that in this settlement they won't pay one nickel of that $39,555.89. In any event, they didn't prove that they ever will pay it, that it was charged up to them, or what it was for, and there is more doubt in that and other items, more hurdles there for the Master to jump over than he can jump.

The Master: You don't know my ability as a jumper.

Mr. Chambers: I don't care if you do jump them, they will have to come back and jump them over again
47189 in the next court.

Mr. O'Brien: I will concede you are some jumper.

Mr. Chambers: We're at the end of a long trial—and it is your business just as much as it is mine, and I am confident that rightly, if you apply all the rules which should be applied, that you cannot destroy this statute. I am satisfied of it; and it is your duty, just as much as mine or Col. Hayward's or Mr. O'Brien's, it is your duty, for instance about this interest, to resolve the doubt in favor of the defendants, and not make these half million consumers, most of whom are overburdened now with the high cost of living and the raise in rents, not make life any
47190 more burdensome, and not make living cost them any more.

I am willing here at the end of the trial to stand up and say my say that this company, with that enormous surplus of over $25,000,000, $20,000,000 I say, is not entitled to any relief in a court of equity, particularly where they did not take the pains to prove these items to which I have called your attention—and there are more—they did not take the pains to prove by competent proof that you should allow them. Now, that is the point.

On real estate of corporations, do I need say any-

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thing further about that? If the tax goes out interest goes out, and that is a little item of $48,435.66. They have got some interest here charged up to unpaid taxes on real estate. Now, I can't remember this minute what real estate it is which they did not pay their taxes upon, but there again Teele has attempted or somebody has attempted to apportion the interest upon unpaid taxes on real estate to gas and nongas, and moreover I cannot remember that they ever proved that there was interest which had accrued upon unpaid real estate taxes. I cannot remember any such proof, and I think I would remember it, if it had been in the case, because I was paying 47192
special attention to see if they did prove these various items set out in Exhibit 205.

To summarize the little item of taxes, if we are right about it, and I am satisfied we are in my own mind, not only has Mr. Teele included substantial amounts for taxes which will never have to be paid, but he has also included substantial amounts for interest upon taxes, which will never have to be paid, and also he has made apportionments, or somebody has made apportionments between gas and nongas, and there is doubt surrounding a substantial part of these items for taxes. There was not in this case any other proof allowed, whether it was competent 47193
or incompetent, there was no other proof in the case outside of that, and some of the tax bills haven't anything to do with the question I am urging, to substantiate the taxes that you should allow for gas making in this city. You struck out Woods' Exhibit 353—

The Master: No, I did not strike out Exhibit 353.

Mr. Chambers: It was excluded.

The Master: I did not let him testify to it.

Mr. Chambers: Well, it is just the same as out.

47194 The Master: That exhibit never was in.

Mr. Chambers: Well, that suits me.

The Master: It is only marked for identification. I let him testify to items, and I had that marked for identification for my convenience, that is all.

Mr. Chambers: You let him testify to the quantities?

The Master: Yes.

Mr. Ransom: And the price of labor.

Mr. Chambers: I come now to another rule that applies—I cannot cover all these things, I will probably take another day or a couple of days if I keep on.

47195 The Master: Go ahead.

Mr. Chambers: Well, I cannot cover them all. I dislike to sum up until I have had time, it is not my usual practice to do it, but perhaps I can throw some light on a few items in the space of time that I will take up. In order to determine what it cost to make and distribute gas in this city you have got to know what to include for taxes. You appreciate that?

The Master: Certainly.

Mr. Chambers: There isn't any sum here before you that amount, nor any evidence before you upon which you can base a finding, and I give you credit for a great deal of skill and ability.

47196 The Master: Why not? The assessed values of these lands for 1918 are in evidence, are they not?

Mr. Chambers: Yes, sir.

The Master: The tax rate is in evidence, isn't it?

Mr. Chambers: Yes, sir.

The Master: The franchise tax assessment, isn't it?

Mr. Chambers: I can't remember.

The Master: The tax rate on that is the same as the local tax rate, because it is included in the same levy. So, there is some evidence. There is some

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evidence of $236,000 actually paid on one item in 1918. You say there is no evidence.

Mr. Chambers: Upon which you can make a finding.

The Master: I don't know.

Mr. Chambers: What are you going to do with the Kingsbridge holder property?

The Master: I don't know.

Mr. Chambers: What are you going to do with Block 1457, Lot 6?

The Master: I don't know.

Mr. Chambers: What are you going to do with Block 1157, Lot 1; Block 1682, Lots 8 and 11; 47198
Block 1704; Block 2583, Lot 260?

The Master: You will see that when you get my report.

Mr. Chambers: How are you going to say what proportion of the taxes is applicable to the 225 feet of that lot, or the northerly 450 feet of the Kingsbridge holder property, or that portion of the property spoken of by Senator Boylan which lies to the east of the holders and the street there? How are you going to do it so as to make a finding in a case of this magnitude and this importance that will be fair to these half million people, I can't see.

The Master: If I ever get a figure for the actual 47199
cost of making and distributing the gas, leaving the tax question out for the minute, you won't find much trouble about taxes. I will figure that out for you pretty quick, I think.

Mr. Chambers: I will take up another subject here which I think will appeal to the Master.

(A short recess was taken.)

47200 Mr. Chambers: When we took the recess I was approaching Schedule 10 of Teele's Exhibit 205, in so far as it related to the salaries, general office.

Outside of this Exhibit 205 and the underlying vouchers, both of which are challenged, Exhibit 205 being based on the books in evidence, so far as I can remember, there isn't any other testimony relating to all of these salaries of the general officers. There is, you will recall, some isolated testimony here and there of the salaries of men like Mr. Cortelyou, and Mr. Carter, and Mr. Addicks, and Mr. Woods, and Mr. Gawtry, and Mr. Brundage, and a few others;
47201 but outside of that there isn't any testimony, as I have indicated, beyond the books and the vouchers, as to these salaries.

Taking Mr. Cortelyou's salary first—something was said about it when Mr. Ransom was discussing his side of the case this morning. Mr. Cortelyou received a salary of $40,000. There isn't any testimony in the case whatsoever to the effect that Mr. Cortelyou knows one single thing about the making of gas, and I think it is fair to assume that he does not know anything about the making of gas. I don't believe he would admit that he does. His experience and his business fits him naturally for other
47202 duties, like the finances of the company, the making of loans, dealing with Wall Street and the financiers; and I take it that this company was not so short-sighted as to retain Mr. Cortelyou as president of the company with any other object in view except that he was to take care of the finances of the company; and to see that it ran smoothly along those lines. He gets a salary of $40,000. No testimony was offered by the other side upon which any finding could be based as to how much of his time he devotes to that branch of the business which I have described from time to time as nongas.

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The Master: Didn't he testify that practically none of his time was non-gas?

Mr. Chambers: No, that was Mr. Carter. Mr. Cortelyou, as I remember it, gave no testimony on that line, as to gas and non-gas.

Mr. Ransom: Oh, yes, he did.

Mr. Chambers: I don't remember. Even if he did, I don't think the Master would be bound by his say so that he did not devote any of his time to the non-gas business. The very nature of the business would be sufficient to warrant you in drawing the conclusion that Mr. Cortelyou devotes a large portion of his time, or at least if it is not measured in time 47204
it is measured in something for which they pay him a salary. If he devoted only ten minutes a day to the non-gas branch of the business, that ten minutes that he devotes to the non-gas business might be as important and as valuable, and perhaps more so, than the rest of the day which he would devote to the making of gas. So, I say, there isn't any testimony in the case outside of that offered by the defendants, as to how you would apportion the salary of Mr. Cortelyou, so that there is doubt on Exhibit 205, and it reaches into Woods' figures.

Now we come to Mr. Carter. Mr. Carter is in the same situation. He devotes, certainly he did de- 47205
vote as secretary of the company—I understand he is now vice-president—but as secretary of the company, this company which controls so many other corporations, certainly a good portion of his time must have been taken up with affairs which related to the non-gas branch of the business, and the complainant did not see fit to offer any testimony as to how the Master would apportion his salary between gas and non-gas, and there is still another element that enters into Mr. Carter, and some of the others, and that is, not only does he devote some of his time to

47206 that branch of the business which is described as non-gas, but he also devotes a large portion of his time I would say, although probably he won't agree with me, a considerable portion of his time to the affairs of these other companies, acting as officer in some of them. He only has so many hours in a day that he spends in business life, and if he has the responsibility and the care of these other companies of which he is an officer, certainly the gas consumers of the Consolidated Company ought not to bear that proportion of his time which is spent in the affairs of other companies.

47207 That is also true of Mr. Gawtry. He is a high salaried official, or was in 1918, and Mr. Gawtry admitted that the employees in his office, a number of them, I think it was as many as eleven, were all engaged in devoting some of their time to the affairs of the affiliated companies in the purchase of supplies. You remember on cross-examination my asking him specifically about that, and I remember distinctly that he admitted that no account was kept of their time devoted to the purchase of coal and supplies for the other companies, nor was any account kept of any of the employees in the office. To that extent certainly the Master would not be warranted in finding
47208 that these gas consumers of the Consolidated Gas Company should bear that expense.

That is true also of Mr Addicks. His activities are so extensive that he too is an officer and has some business relations and connections with the other companies, particularly so in the purchase of oil. He purchases all the oil for all these affiliated companies with the exception of the New York Mutual, as I remember it. He said that no account was kept of the time that he spent for these allied companies, and no account was kept of the time devoted by the employees under him to the affiliated companies.

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I say there is no evidence upon which the Master may base a finding that all of his salary, as Teele treated it, and all the salary of the other persons in his office, is devoted in the making of gas.

That same situation is true of some of the others. Mr. Brundage I think might be included in that. Mr. Woods admitted that he gets a salary from some of the other companies, but it is not very clear in the testimony as to just how that is treated, nor whether an accurate account is kept of the time he devotes to these other companies. I think he said he usually gave an oral statement, or sent in something, he didn't know exactly how they did apportion his time 47210
to the other companies, but he thought some apportionment was made. My point is that having attempted to apportion his time to the Standard or to the Astoria or to the Central Union, or whatever company he was doing business for, that it was their duty here to show you by proof that was convincing and that was competent, that the time that Woods spent with the Standard was properly charged to the Standard. Now, there isn't any such proof in the case, and that throws additional doubt on the cost of making gas for 1918, as shown by the Teele exhibit, and that emanates and permeates all the way back to 1900, and Exhibit 366, which runs back that far, which 47211
showed how much it cost to make and distribute gas.

I do not need to mention others, because there are a number of others, and so much doubt has been thrown on the item of salaries of the general office that I do not see how the Master is going to do other than take the testimony offered by the defendants, and apportion it in the way in which we suggested it should be apportioned. It seems to me that that apportionment is more than fair. Perhaps it might better have been made one-half attributable to non-

47212 gas and one-half to gas. But, how are you going to apportion the time spent by Mr. Gawtry and Mr. Woods and Mr. Addicks and Mr. Gawtry [illegible] between the consumers of the Consolidated and the other companies? I confess I am at a loss to know, but in any event, in the light of the situation, it seems to me that this rule ought to be invoked there, and that is that wherever and whenever complainant failed to prove facts upon which you can make a finding as to how much of a man's time was devoted to other companies and how much to this, you would be warranted because of a failure of proof in throwing out
47213 entirely that officer's salary. That is the rule, as I understand it, and that is the rule that I think ought to be invoked, that when it is impossible, as Mr. Gawtry said it is impossible, for anybody to tell how much time he devotes to the other companies, no account was kept of it, he said it couldn't be done, and now that we are confronted with that situation, it was not done, and no account was kept of it, and the burden was on the complainant, I say that the rule of law should be applied to that situation would be to take Mr. Gawtry's salary and exclude it entirely, although at first blush that would seem unfair.

47214 But, the burden is on them. They should have shown how much time he devoted to the affairs of this company, and how much to the affairs of the other companies, and this is outside and apart from questions of gas and non-gas. I am speaking now of apportioning his salary between the affairs of this company in the making of gas and the affairs of the affiliated companies in the making of gas.

I say apart from this Exhibit 205 and the oral testimony of these men who said they couldn't do it, I say there is no competent testimony in the case upon that proposition.

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I come now to another situation which has been forgotten by the other side. I would naturally want to believe that they had forgotten it, perhaps I would have forgotten about it if I had been in Mr. Ransom's place. That is this: You will recall that the question came up and a good deal of time was spent about it, concerning the operation of some of these plants by the Government, and it seems that a contract was entered into between the Government on the one hand and the complainant on the other, whereby the Government undertook for purposes of war to strip or take out of the gas made by the company certain light oils, etc., for the purpose of making ex- 47216
plosives. Without going into the details of this contract, what I have to say about it is this: We contend that that contract was voluntary, that it only affected one of the plants from April until November or the early part of December, and that it only affected the other plant from the middle of July, as I remember it, until about the first of December, and no one can say that it affected the operation of those plants at any other time, because those periods that I have just indicated are the periods and the only periods, which the company claims that the Government was operating the toluol plant.

The question came up as to whether the consumers 47217
received during that time the quality of gas prescribed by the statute, namely, 22 candles, and you will recall that one of the witnesses was on the stand, I have forgotten whether it was Mr. Gawtry or Mr. Addicks or who it was, and it was admitted by that witness that the Consolidated Gas Company had presented a claim to the Government for damages arising out of that transaction, and he would not say—he said the claim had neither been allowed nor rejected, and he would not say whether the claim was as much as half a million, or what it was.

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You have before you then, this situation, that while this case is pending and undetermined, the company has made some kind of a claim against the Government, which is in a substantial amount, and the amount of recovery is uncertain and indefinite and may affect this whole situation. The recovery there may be so substantial that if there was any doubt at all as to whether they were obtaining a fair return under the statute, that amount that they might obtain from the Government may be the turning point in the case. So I say, that that one little feature alone is [illegible] to throw enough doubt on the case to

47219 warrant a dismissal of the complaint.

The witness to whose testimony I refer was Mr. Adlicks, and I will quote it, because this might be the turning point in the case:

"Q. Does the Consolidated Gas Company intend to lay a claim against the United States Government for any losses of any kind suffered by the Consolidated Gas Company by reason of the Government operations at these two plants, including a claim for loss in illuminating power of the gas?

"A. I am a vice-president of the Consolidated Gas Company, and as such I do not know that I can properly answer that question.

47220 "Q. I know, but you signed this contract?

"A. I did.

"Q. This tolled contract?

"A. I did.

"Q. That would allow you to claim loss in the illuminating power of the gas?

"A. It would allow us to include anything that is included in the terms of the contract.

"Q. Do you not say that is included?

"A. If that were a part of the claim, yes.

"Q. Have you any idea what the claim already filed in that regard amounts to in money?"

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Then counsel for the complainant objected.

"A. It is not expressed in money.

"Q. Have you any idea what it amounts to yourself?"

Counsel for complainant again objected.

"A. No.

"Q. Does it run up into, say, half a million? Is that too much?"

Counsel for complainant again objected.

"A. I do not know.

"Q. Have you made any claims for loss of heating power of the gas of these two plants, by reason of the Government operation of the toluol contracts?

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"A. I do not recall any claim on loss of heating power."

Just ahead of that the witness testified, in speaking of the same claim, as follows:

"Q. That is, the claim has not been allowed?

"A. It was neither allowed nor rejected."

To summarize that just a little bit. I say that this contract was a voluntary contract, that this company was not forced into making that contract, they were only too anxious to do it. The contract by its terms protected not only the Consolidated Gas Company, but I say it protected the consumers, and I say it was the duty—you will see by the running cross-

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examination that took place—I took the position at that time, when Mr. Addicks was on the stand, that it was the business of this company under the terms of that contract to take every step that should be taken to protect these half million consumers and when the consumers were receiving a candle power of, say, 18, 19 or 20, it was the business of the Consolidated Gas Company to keep track of that, and to make a claim to the Government. What are they doing here? What is the situation? The Consolidated Gas Company is trying to make your Honor believe that that

47224 contract with the Government was forced upon them, that it was not voluntary, that it was unsolicited, and they are saying now, "We did not furnish the consumers the candle power provided for by the statute and the consumer must suffer that loss." Not only that, but they say they have made a claim to the Government to neither reject it nor allow it, which they won't say amounts to half a million or less, they won't tell anything about it, counsel objects to the questions about it. If that claim which the company has made to the Government is allowed in any substantial amount, I say that that amount belongs to the con-
47225 sumers, at least the consumers should have the benefit of the amount in the figures for 1918; and I say it is sufficient to throw enough doubt on this question of 1918 to prohibit your Honor from finding that the statute is confiscatory.

The Master: Assuming that that is so, since the cessation of the operation by the Government, and assuming that the company was relieved, upon any theory, of supplying 22 candle power gas during that period, they have since been obligated to provide 22 candle power gas, haven't they?

Mr. Chambers: Yes.

The Master: And if as a matter of fact it cost
47226 them more than 80 cents to make 22 candle power gas after the Government's operation stopped, this question of who was entitled to this recovery hasn't anything to do with the question whether the statute is confiscatory or not, has it?

Mr. Chambers: In the first place what I have said about 1918, as to the doubt about taxes and officers' salaries, and the like, applies, of course, to 1919, and with the additional proviso that in 1919—you have not the whole year, if you are going to exclude 1918 from the consideration in this case, then you take up 1919, and you have part of a year, which you have

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said yourself is not a proper period upon which to destroy a statute.

The Master: I never said that at all. I said that ten months of a year does not prove the result of operations for the year, and I repeat it.

Mr. Chambers: Well, do you think you could destroy the statute on a ten months' showing?

The Master: I do not know anything about that, but I want to set you right and I want to set this record right. So far as the ten months shows what coal cost, what oil cost, what labor cost, what other items in manufacturing gas cost, I am going to consider it, of course; and, of course, it has a very strong 47228
bearing on this case. The only thing I have said is that results of operations are usually based upon a complete fiscal year's operations. That is all I have said.

Mr. Chambers: Well, my answer to the other matter is that if you are just going to decide this case on a few months of 1919—

The Master: I am not going to do anything of the sort; but in 1918, the proof is, according to the contention of the complainant, it used the same quantity of material and the same amount of labor, that got to the consumer at 18 or 19 candle power, as they would have used for 22 candle power, the only reason 47229
why the consumer did not get his full 22 candle power is because the Government took it away.

If that is so, the cost of making that 22 candle power and operating that plant was precisely the same in 1918. The question of whether this company collects, if it ever does collect any damages, and where those damages should go, is an entirely different question.

Mr. Chambers: You do not get the point of my argument. I am saying that the Consolidated Gas Company has come in here and has not disclosed the

47230 entire situation to you; we had to drag it out of them on cross-examination. It appears, and I have just been showing you it appears, that this company has filed or has laid some kind of a claim against the Government for the loss to them in operating in 1918.

The Master: What has that to do with the question I have to determine?

Mr. Chambers: Suppose that amounts to half a million?

The Master: What have I got to do with it?

Mr. Chambers: You have to take that half a mil-
47231 lion and add it, deduct it, or credit it to the operating expenses.

The Master: That will not change the cost to produce 22 candle power gas, will it?

Mr. Chambers: It will change the facts relating to their losses or profits in 1918. If they are making money, as I say they are, it will make $500,000 more.

The Master: Are you going to have another war for them this year?

Mr. Chambers: No, but then you come to 1919, and Mr. Woods' figures are based on figures as of October 16, 1919. I say they have not any testimony
47232 in here upon which you could decide this case in 1919.

The Master: That is all right, but what I am trying to point out to you is that the mere fact that the consumer got a little less candle power than he was entitled to does not change the cost of making 22 candle power gas.

Mr. Hayward: Of course, I want to make it clear when it comes to my argument that this company had no possible excuse for letting the candle power run down, when they could have kept it up at Government expense.

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The Master: That is a different question.

Mr. Hayward: Yes.

The Master: His point is—

Mr. Chambers: I am not arguing about candle power; I am going to take that up.

The Master: In reaching a conclusion as to the results of operation in 1918, I have got to take into consideration that they are going to collect some money from the Government. But I am not approaching it from that angle, I am not bound by what their books show the result of operations to be; I am going to determine what in my opinion it cost them in 1918 and in 1919, what in all probability it costs 47234
them today and will for a number of years in the future, to make 22 candle power gas. That is what I am going to decide.

Mr. Chambers: But my point is this: They have laid great stress on their inability to make a fair return in 1918; Mr. Ransom has spent a good deal of his time on that question throughout the case. 1918 is supposed to have been the year in which they said they fell below what was a fair return. I am speaking of that year. Here is an unliquidated claim that may result in a substantial recovery.

The Master: But wait a minute. The only theory from your angle upon which they could take the 47235
benefit of this recovery would be by giving the consumer less than 22 candle power; is that not so? In other words, they will be making a return, upon your theory, by giving the consumer less than he is entitled to; they are not entitled to a return on that basis.

Mr. Chambers: It is working an unfair disadvantage to the consumers.

The Master: But they are not entitled to any such return on that basis.

Mr. Chambers: They say on the one hand, "We

47236 are excused from furnishing you 22 candle power because the Government was operating our plant"; on the other hand, they file an unliquidated claim with the Government because they were not able to furnish it.

The Master: On the other hand, the State of New York says, "You are going to have a tax on real estate of corporations," and you say it is a duplication.

Mr. Chambers: Let me set you right. That real estate of corporations tax is a City tax, is it not? The State of New York has not anything to do with
47237 it. We devote our time to laying a tax on special franchises.

Mr. Ransom: The State passed the law, I hope.

Mr. Chambers: We do not have anything to do with that. The tax was laid by the City as a safety device in case this company crawled out of paying its special franchise taxes; and it is doing it, because it has filed a claim.

The Master: 1918, as I have said before, and as you have tried to quote me in a manner which would be misleading, presents unusual conditions and situations. It did not in any form change the amount of gas oil that you need to make water gas, and it did
47238 not change the amount of coal that you need, or the amount of labor that you need.

Considering 1918, I have got to eliminate from consideration certain particular considerations arising in 1918; and so will the Court in reviewing my decision. But, after all, when you get all through with it, 1918 draws a very complete picture as to the amount of material and labor you will need, the amount of property you will need and what it costs to make a thousand cubic feet of gas. And for the eight months of 1919 you get a similar picture.

Mr. Chambers: I would not say that. You re-

member Woods in his opinion told you what labor it needed to make a thousand cubic feet of gas was not regulated or governed by time, and as to how many gallons of oil it takes to make a thousand cubic feet of gas, or how much coal, is not regulated by 1918 or 1919, except that in 1918 you might have a little poorer quality of coal. 47239

The Master: I say that.

Mr. Chambers: He says, in other words, you can go back to 1906 to determine that question.

The Master: I am saying that. That is what I am doing: I am taking the record from 1906 to 1918, and I shall determine what I think is an approximately correct amount of labor and material required, and as to what that cost has come to be, from the 1906 prices to date. The fact that there are some peculiar situations arising in 1918 does not change those particular elements of cost. 47240

Mr. Chambers: It is apparent what I am trying to do in this short space of time; I am trying to show to the Court—

The Master: I do not know what you call a short space of time. I adjourned this hearing on the 5th of March, or the 4th of March, as I recall it, and we are now in the 29th.

Mr. Chambers: I was not able to go through 15,000 pages of testimony. 47241

The Master: No, but if you had done what I assumed you had done, you would have notes as to the proof that was put in as we went along.

Mr. Chambers: No, I say I have not even had time to make notes as we went along. The hours were too exacting.

Take Woods' Exhibit 353 for identification, and in that exhibit somewhere, although it is not apparent on the face of it, he has some amount for unaccounted for gas. I think you find it is the difference between cost of manufacture—

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The Master: Putting it in another way, Mr. Woods says that you have got to make more gas in order to get the quantity delivered. Putting it this way—that in order to deliver a thousand cubic feet of gas, you have got to make more than that.

Mr. Chambers: Right. He says there is some unaccounted for.

Mr. Ransom: Seven per cent. That is, out of every hundred per cent that you make there will be 93 per cent sold.

The Master: All right; so the quantity of gas delivered to the consumer in 1918, 1919, or any other
47243 year, represents 93 per cent of the make; is that correct?

Mr. Ransom: Yes.

Mr. Chambers: It was about seven per cent, wasn't it, that he said you would lose?

The Master: The complainant's contention is that if I take, for instance, this sheet here showing a total sale of gas of 18 billion cubic feet, that represents a manufacture on the basis of 18 billion cubic feet, being 93 per cent of the total manufactured; is that correct?

Mr. Ransom: Yes; except that in that particular year the percentage may have been as shown in Ex-
47244 hibit 205 and in 365, a small fraction of a per cent over 7. But he says by and large, under present conditions, 7 per cent is the reasonable proportion of unaccounted for.

The Master: I had an impression that in 1918 it was a little over 6.

Mr. Ransom: Well, perhaps that is true.

Mr. Clark: 6.12 in 1918.

The Master: That is what I had in mind, that it was something over 6 instead of 7.

Mr. Chambers: Well, this is the point as to this unaccounted-for gas—it permeates this Exhibit 353

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and Woods' figures. And I am going to show that again the records impeach and challenge his figures. Certainly I think it is safe to say that as to unaccounted-for gas it would not be fair to take 1918 any more than it would be, perhaps, to take 1906.

It seems to me that any year on unaccounted-for gas would be proper. I mean you could not take any particular year, because it seems to me the year would not make any difference with it. There is that unaccounted-for gas. What do the records show? Defendants' Exhibit AA-122, being Table 57, shows from the company's own reports to the Public Service Commission, their own admission, that in 1906 it was 47246
2.93, in 1907 it was 4.87, in 1908 it was 2.95, in 1909 it was 4.52; it was 3.25 in 1910, in 1911 it was 2.70, in 1912 it was 3.68, in 1913 it was 2.81, 1914 was 4.06, 1915 was 3.10, 1916 was 4.65, 1917 was 4.51 and 1918 was 6.12.

The Master: Did not Mr. Woods testify to a change in the method of computing?

Mr. Ransom: Yes.

Mr. Clark: For this case, yes.

Mr. Chambers: This is the loss of the Consolidated alone. Then when you look over and find the exhibit which shows the loss, taking in the whole system, why, the Consolidated Company is penalized there on loss 47247
of gas because they are in the system. The table to which I refer is Exhibit AA-125, and these figures jump up clear through.

Mr. Hayward: And you will remember that Mr. Woods gave us the rule that the percentage of unaccounted-for gas would be lowest where the consumption was densest per feet of main.

Mr. Chambers: Right.

Mr. Hayward: And the Consolidated had more than twice as dense consumption as any other company in

47248 the system but one, and 25 per cent denser than that particular one.

The Master: What was the change he made in the computation there between 1917 and 1918, do you recall?

Mr. Chambers: I do not remember that.

Mr. Clark: He said they had given the other companies what they had before consolidation and the Consolidated Gas Company had taken the balance.

The Master: My recollection is Mr. Woods said that experience had shown they had been underestimating the Consolidated loss.

47249 Mr. Clark: He thought so.

Mr. Ransom: Let me just say one thing. When the transfer of gas first started, early after 1900, the original basis of computation was to assign to the other companies the same percentage of unaccounted for that they had had as of the time when the transfer of gas started, based on their own supervision of their mains and distributing system.

The Master: That was quite high.

Mr. Ransom: That, of course, was quite high. Then as the situation developed in 1905 and 1906, after the Consolidated Company had taken over the work on the mains of the other companies and had brought

47250 those mains to a better condition, the result of continuing to apply to the mains of other companies on the transfer system the percentages which they had had at the time the transfer started left the Consolidated having simply what was not attributed to the other companies, using the old ratio—made the Consolidated percentage abnormally low.

The Master: I remember it.

Mr. Ransom: Then when they started the new system under which the whole thing was distributed on the basis which has been testified to, part on the mileage of active mains and in part on sales, why, that

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was deemed a gift, a figure fairly attributable to each of the companies, taking into account all the factors. The figures for the earlier years after the Consolidated had brought the mains of these other companies up to something like the same condition as the Consolidated's, of course, does not accurately reflect the situation.

The Master: Well, that is Mr. Woods' claim, anyhow.

Mr. Ransom: Of course, we contend there was not any valid, reasonable explanation given by Mr. Woods for that change, except an artificial change, and that on his own rule the Consolidated alone certainly 47252
ought to do much better than the whole system, and that there was nothing shown where the other companies were losing less than they had been when this plan was started. In fact, the rule that Mr. Woods said they adopted was directly contrary to the facts shown in the development of all the years, and to his rule regarding density. It was artificial.

The Master: What figure do you claim it ought to be for the unaccounted for?

Mr. Hayward: I claim it ran for all those years around 4 per cent.

Mr. Ransom: For the system.

Mr. Hayward: No. 47253

Mr. Chambers: I was going to state what I claim.

Mr. Hayward: Defendants' Exhibit AA-125 shows it.

The Master: From two something up to four something.

Mr. Hayward: A little over four.

Mr. Clark: The whole system runs under five—the whole system, up to 1917.

Mr. Ransom: According to what exhibit?

Mr. Clark: Exhibit AA-125.

Mr. Chambers: My claim is that the consumers of

47254 the Consolidated Gas Company ought not to be penalized because they are in a system, and that in fairness you are going to find some amount for unaccounted for gas. Now, in fairness to the consumers of the Consolidated it should be limited to that exhibit, the Consolidated Gas Company itself, and not the system; and, moreover, you should take the average covering the years shown there, from 1900 to 1918, and see what it is, and find that period. It seems to me that would be the best thing to do. Not the average of the system, but the average of the Consolidated; because as we a moment ago agreed,
47255 whether it is 1900 or 1918, it is unaccounted for gas.

Mr. Hayward: You are asking what we claim? The thing shows under five per cent for the whole system. They jumped up in 1917 and 1918, which included December, 1917, and January of 1918, as I recall, the gas men saying that those were unprecedented weather conditions and they could not get any gas satisfactorily through the mains at all; which would account, of course, for the leap up in those years.

But my contention is on Mr. Woods' own rule, of the system averaged during those years around five per cent, the Consolidated system, the Consolidated
47256 itself or the Consolidated Company itself, being more favorably situated than any of the others, twice as favorably as any of the others except one, that certainly four per cent should be the maximum that they could claim for this unaccounted for gas, for this specially favored company based on the record of all the companies put together in the previous years. That is what we are going to claim.

Mr. Chambers: What I do object to is the company claiming not only that coal and oil and labor prices have gone up, but trying to make your Honor believe here that unaccounted for gas has gone up,

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tor; whereas their own admission in the Public Service Commission reports indicates quite to the contrary. I think if you would strike the average there based on Table AA-122, why—

The Master: Do you agree with Colonel Hayward on that four per cent?

Mr. Chambers: Well, whatever it is. Perhaps that would be about it. I think that is the maximum, though I think anybody could sit down and figure it from that table—how much it averaged. The Consolidated Company alone, that is.

The Master: Do you say four per cent is fair, from your knowledge of this case? 47258

Mr. Chambers: I would rather figure it right out here from this table.

The Master: Why are you not able to give me a suggestion such as Colonel Hayward does? Colonel Hayward says that four per cent would be fair; so why don't you give me that?

Mr. Chambers: He said that was the maximum.

Mr. Hayward: I said that was the maximum that you could take.

Mr. Ransom: Mr. Little said seven per cent you could take. In his statement and in his testimony also there was a table of the way the costs should be made up, and that was seven per cent. In his 47259 testimony he said he thought that was very reasonable, seven per cent being the lowest—not only the lowest in the City here, but anywhere else, as far as I know.

Mr. Hayward: I say four per cent is as near as you can get at it, if the Master please, from the figures put in here.

Mr. Chambers: What are you doing, adding to his testimony?

Mr. Ransom: No, I am taking Mr. Little's testimony at page 11255, as to what he figures the cost of gas. He said he used seven per cent for his pur-

poses as the fair figure and, interrogated about it, he said if this company showed seven per cent that was a reasonable figure.

Mr. Chambers: It does not, it shows less than that.

Mr. Ransom: It shows seven per cent.

Mr. Chambers: So much for unaccounted for gas. Another question I call your attention to in this Exhibit 205—and I called it to your attention the other day—relates to the item of municipal lighting at 75 cents.

The Master: Do not waste any time on that.

47261 Mr. Chambers: You understand that?

The Master: I know your point about that.

Mr. Chambers: I say there is doubt about that.

The Master: Well, I don't agree with you.

Mr. Chambers: That may be funny and all that—

The Master: No, I got your point; I do not agree with you at all. They cannot set up a separate plant to make 75-cent gas for the City; they have got to do it the way they did.

Mr. Chambers: They should offer some testimony to show it, though.

The Master: No, the record is complete on that.

Mr. Chambers: I do not say so. I say you cannot

47262 charge these 80-cent consumers for the amount of labor and office expense that went into it.

The Master: Yes, we can; we have got to. The State of New York, which had the regulatory power, has fixed the limit of 75 cents for which this company has got to sell gas to the municipality, which means that the consumer of gas out on the street or in the public buildings has the benefit of it at 75 cents, whereas he pays 80 cents in his own home. You cannot split hairs there. They have got to make the gas in their own plant, they cannot set up a different plant.

Mr. Chambers: I do not dispute that, but I do say

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they should offer some testimony as to what portion of their plant was used in making those enormous quantities—117,000,000 cubic feet—and take it out.

The Master: I have got your point, Mr. Chambers. I disagree with you absolutely. The consumer gets the benefit of it by reason of its use in the public welfare.

Mr. Chambers: And another thing, they are in court not testing a 75-cent rate. That is another thing.

The Master: That does not mean anything.

Mr. Chambers: They concede that the 75-cent rate as far as the City is concerned is constitutional, not having been made a party here.

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The Master: Not at all.

Mr. Ransom: No, we deny that.

Mr. Chambers: I say it is a fair argument.

The Master: No.

Mr. Chambers: Why not? They do not contest it. They say the 80-cent rate is unconstitutional, but they say nothing about the 75-cent rate.

The Master: They may have been very wisely advised and cleverly advised not to bring in the 75-cent rate issue.

Mr. Ransom: In the other case that was passed upon.

Mr. Chambers: The City was a party in that case. How could they pass on the question that you have left the City out? The City was a party then and, of course, they could pass on it when they had the parties before it.

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Mr. Ransom: Just as the Master has pointed out, the fact that a separate statute requires the company to sell its gas to the City at 75 cents, does not make the statute with respect to that 75-cent rate for municipal gas constitutional.

Mr. Chambers: The Master has ruled that all of the vouchers of this company *en bloc* are in evidence

47266 —everything. We did offer a few of the vouchers in evidence to show you that the vouchers did not disclose on their face that they related to a proper expenditure or to an expenditure for the making and distribution of gas, and to that I want to allude right here.

Mr. Teele's exhibit, of course, is based entirely on the books and on these vouchers. Do you recall that we offered in evidence a number of vouchers? I will take up just one line, for instance, to show you that you have not any competent proof before you as to thousands of dollars of these expenditures. You
47267 take an expenditure that was made to D Cady Herrick for law expenses, which Mr. Teele has in his exhibit. Now, there is not a single thing disclosed on the face of the voucher that indicates what kind of service D Cady Herrick was rendering to this company.

You take the vouchers for the services rendered by ex-Public Service Commissioner Decker. Decker has got his little bill in here of five thousand and something. There is not any testimony and the voucher does not disclose what services Decker rendered to the company; it might be services outside. That is true of Neale Towner, a lawyer in Albany. His voucher does not disclose it.

47268 Then you remember during the latter end of the trial we offered in evidence a great quantity of vouchers, although they were in evidence—I have my doubts about it still, but those particular ones are, because we offered them. Those vouchers failed to disclose on their face what the expenditures were for. And so I say that the Master has not any testimony before him as to thousands of dollars of expenditure and thousands of vouchers, that the expenditures covered by those vouchers were expenditures made in the making of gas, the making and distribution of gas. Therefore Mr. Teele's exhibit, which covers certain items,

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cost of distribution and so on—his exhibits are of no value as a basis for a finding.

Furthermore, I say this about Mr. Teele's exhibits, all of them: On cross-examination he admitted, did Teele, that he made no audit, he never made any audit of this company's accounts at all. He did just what I said a little while ago—he took the figures off the books, just transferred them from the books to his schedules and made these distributions between gas and non-gas.

Now, I take up the office building. You asked me the other day what I thought ought to be done with the office building, and I will be glad to tell you now 47270
what ought to be done with the office building. At least I will be glad to tell you something that ought to be done with the office building. In evidence we have Defendants' Exhibit AA-402, being the revenue from rent of space in the general office building, 1914 to 1918, inclusive, and then, supplementing that or fortifying that, is Exhibit AA-403, which shows the operating general office building expenses as taken from the operating ledger of the company. This is given for the same years, both exhibits covering the years 1914 to 1918. I suppose they do not go back of that very much because the office building was in a different situation prior to that or prior to 1912 or 47271
1911.

These tables, or at least one of them, shows the total expenditures made by the company from their own books as to the general office building, and I say that the least you should do for these consumers would be to take the operating expenses on the one hand and the revenues from space and give the consumers the benefit of the income from that.

But that is not all. That is not my contention in full. I claim that there should be added to this Table AA-402 some additional revenue for rent. We

47272 showed you, and it appears in the testimony—and we tried to show you some additional testimony—that there is space in this office building which is not used advantageously and is not rented, and there is space in this office building which ought to bring revenue to this company and does not, like the restaurant and the auditorium and the rest room. Now I say that you not only should take the actual revenue from rent which they received for these different years, but you should add to it the fair and reasonable rent based on these leases for this space which is not occupied by the Consolidated Gas Company in the making of gas.

47273 And then I say you should use that as a credit, and then deduct the operating expenses. That would be fair, it seems to me—a fair way to deal with it under the circumstances.

As to the 57th Street office building a somewhat different situation is presented.

The Master: I think you can save time on the 57th Street office building. My mind is made up about it. I won't disturb their claim on that.

Mr. Chambers: Well, of course, if your mind is all made up—

The Master: I am telling you frankly that I have given it a lot of thought and I know your views about

47274 it. I am not going to set up my judgment against the judgment of the officers of this company in that case.

Mr. Chambers: It does seem to me that these consumers ought not to be obliged to carry a building of that kind in that locality.

The Master: It is not costing them any more than it would somewhere else, or in some other way.

Mr. Chambers: I do not agree with you there.

The Master: There are a number of points about which you do not agree with me.

Mr. Chambers: Senator Boylan testified—and there was not any testimony contradictory of his directly on

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that point—he said you could rent the same amount of office space right there, right near there, at a saving of a considerable amount; as much, I think, as $40,000 or $50,000.

The Master: Well, I have made my ruling on that.

Mr. Chambers: I did not hear anybody challenge Senator Boylan's figures.

I now present another phase of the case which I think is fatal to a recovery by the company, and that is this question of candle power. It seems to me that this company, having come into a court of equity, should at least have come in showing to the Court that 47276
it had complied with the law or with the statute; because I think, as during the course of the trial somebody said, that was not a contractual obligation on their part, but it is more than that, it is statutory and the Legislature has said that the company must furnish to its consumers candle power of at least 22.

The testimony in the case shows that while this very case has been on trial this company has not lived up to the statute. You will recall while Mr. Woods was on the stand he testified that the company tested gas. He testified the company made tests of all gas sold at the stations at 79th Street, 47277
Grand Street and Bowery and Third Avenue, and the company admitted, furthermore, that they received daily, with the exception of holidays and Sundays, postal cards of the City's tests. You recall that we tried to offer these postal cards in evidence, but you would not receive them.

The Master: I recall it very well.

Mr. Chambers: But in any event Mr. Woods, or one of the witnesses for the company, admitted that they received these cards each day; and then he testified that the company made the tests themselves. Now,

47278 when complainant closed its case there was not a scintilla of proof in the case by the company as to what these tests would disclose—there was not any.

The inference to be drawn from that is that if those tests had shown a full compliance with the law, or at least a compliance with the law, they would only have been too ready and only too willing to offer them in evidence. That is the inference I draw from that. But when the case was closed they had not offered any proof in this case; they were relying on some proof that they claim the defendant offered to show the candle power they furnished to the public.

47279 Let us see what their own records show. Their own books show and their own tests show that in January, 1919, about the time that the action was brought, they were furnishing to the public day after day, candle power of less than that prescribed by the statutes.

The Master: What figures are you referring to now, Mr. Chambers?

Mr. Chambers: I am referring to the daily record of manufacture of the 99th Street station.

The Master: What does that show?

Mr. Chambers: That shows that running right through the month they failed to furnish—and this
47280 is in accord with their own tests and their own records—that they failed to furnish to the public candle power of 22 for sixteen days—no, fifteen days.

The Master: On those days what was the candle power that their books show?

Mr. Chambers: 21.10, 20.89, 20.63, 20.54, 21.78, 21.36, and so on.

The Master: This was what, January, 1918?

Mr. Chambers: January, 1919.

The Master: Which column were you reading from, "Company Tests 1919"?

Mr. Chambers: Yes.

The Master: Starting with the second of the month

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it ran 21 plus, and 21, 20.89, 20.63, then 21.58 again, and runs 21.36, 21.78, 21.74, 21.73, and along there, until about the middle of the month when it runs up to 22, and then it seems to stay there the rest of the month with the exception of two days toward the end.

Mr. Chambers: I do not say that that is correct. I do not see that those figures are correct. I say that they did not furnish as much candle power. I say that is an admission, and I say when George B. Cortelyou was verifying the complaint in this action the company was violating the law. He verified the complaint on January 16th, 1919.

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The Master: What am I going to do with this on January 22nd, where, according to this paper that I have before me, the company's test was 21.10 on one day that the City's test was 22.33?

Mr. Chambers: What are you going to do with that? I say I do not care what you do with it. There is not anything funny about it. Here is a company making a test as Mr. Addicks admitted, just as we made them, and as far as I have found out all our tests were O K'd by Mr. Addicks.

The Master: But they say these are not reliable.

Mr. Chambers: You have forgotten way back in the case where Mr. Addicks admitted that the tests made the way we did it were fair and reliable. So that it is fair and—

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Mr. Ransom: That is your inference from his testimony.

Mr. Chambers: I say it is a fair inference to be drawn by me.

The Master: The company's tests would seem to be 20.83 and the City's test 22.33.

Mr. Chambers: Certainly, that is true all the way through. Here is the company making its own tests.

The Master: What is the correct figure, if either of them?

47284 Mr. Chambers: I think ours are the correct figures I think ours are substantially correct. We had them sworn to; they were sworn to by officers. You will find all the way through here that we disagree with them. They were making it downstairs and we were making it—

The Master: Taking this same paper for identification, because it is not in evidence, as I see, on the 3rd of January, 1916, the company—

Mr. Chambers: This is in evidence. Excuse me.

The Master: It is marked for identification.

Mr. Chambers: No, this is taken right off their
47285 books. If I had the books here I would use them.

The Master: On this date, January 3rd, we have the company's test at 20 something and 23.26 as the City's test; then again the company's test in 1915 and the same day the City's test 22.94, and here 21.63, and in 1918 the company's tests 19.73 and the City's test 19.

Mr. Hayward: But, don't you see, that those tests may have been made at different times in the day. It is the duty of the company to keep that candle power up, no matter when the consumer wants to turn his gas on and use it. If the City tests had been made in the middle of the day, with everything warm and most
47286 favorable, it would be different.

Mr. Chambers: That is so. The Company has not shown what hour they made the tests.

The Master: But it is also true, is it not, that the most a manufacturing concern like this can do is to figure out as accurately as possible the amount of gas oil that ought to go in to make a certain candle power gas at the works, and to conform to that standard, on the theory that that standard will produce the candle power test out a mile from the works? Can a manufacturing concern do more than that?

Mr. Hayward: Yes.

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The Master: What can they do?

Mr. Hayward: Certainly they can do it.

The Master: What can they do?

Mr. Hayward: They can make gas of sufficient richness that the law requires them to make, so that there will not be some fault with it. I do not mean it shall not fail once in a month, but when this company fails fifty per cent of the days to furnish the gas required by law, they ought not to be allowed to bring such a case as this in any court of equity.

I will go further and say that I feel that same way about it during this alleged period when they trump up poor old Uncle Sam to give them an excuse. You said that they changed the law while I was away, but I can only say sitting back here that they have not changed arithmetic or the English language enough to make it possible. You may say they have, but I say they have not. This company has got to make gas day in and day out, and at two o'clock in the morning or when a man gets up, so that he will get 22-candle power gas. If that standard which is fixed does not do it fifteen days of the month, they ought to change the standard, and you know it.

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The Master: Yes, but the evidence in this case is that for a period of six solid months, during which Mr. Hine checked up thousands of tests, it ran over 22.

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Mr. Ransom: This is January, 1919, the first two weeks, as Mr. Woods and Mr. Addicks testified was during the period of dry mains.

Mr. Hayward: No, I do not think Mr. Hine testified to that.

Mr. Ransom: Dry mains from toluol.

The Master: This situation is so full of doubt as to the tests, even of their own men, and they depend so much on observation, that there must be some more accurate and fair way of holding this company to the

47290 statute. Apparently the engineers figured out that 23 1 2 candle power, I think it is, at the works, was the amount—I have forgotten the figures precisely—that ought day in and day out and hour in and hour out to be shown at the testing stations.

Mr. Hayward: Yes, except in case of accidents.

The Master: Except for accidents.

Mr. Hayward: Certainly.

The Master: If I reach the conclusion in the light of all the evidence that that was a fair judgment, I shall find as a fact that that complied absolutely with the statute, as long as they made gas of that candle power
47291 at the works.

Mr. Ransom: I want to call your attention to one thing, that for this same January, 1919, which was the period while the company was still having difficulty with the dry mains from toluol, and that for January, 1919, according to the same books, the 99th Street works candle power test—

Mr. Hayward: Where does he get this dry main stuff?

Mr. Ransom: For the month of January 23 1 2 candle power at the works.

Mr. Hayward: Is there any testimony about the tests at the mains? I did not know the mains were
47292 dry.

The Master: The testimony was introduced, Colonel, and which you may not have heard, to the effect that the taking out of the light oils from the gas resulted in a gas going through the mains which had no light oil in it that would stick to the mains. Therefore the mains became dry; whereas before the extraction of the light oils this oily gas going through always left a residual or oily substance on the mains that helped keep up this candle power. Therefore they speak of them as dry mains.

Mr. Ransom: That is not quite correct.

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The Master: Isn't that substantially correct?

Mr. Ransom: That the mains during the period that the gas went through, during the toluol period, as I understand it—the gas going through the mains did not have any light oil.

The Master: Isn't that what I said?

Mr. Ransom: Consequently the mains dried out.

The Master: Isn't that what I said?

Mr. Ransom: Then for the first six weeks or two months after the period of toluol extraction, as the company notified the Government at the time, the mains had to reabsorb this coat of light oil.

The Master: Isn't that what I have said? 47294

Mr. Ransom: Not quite.

Mr. Hayward: Exactly.

Mr. Ransom: It is not that the oil in the mains keeps up the candle power.

The Master: Do you know anything more about it now, Colonel, than when I finished?

Mr. Hayward: No, I think you expressed it a good deal more clearly than Judge Ransom. But here, for instance, is there not a standard about bricks, and that they have got to be a certain size? I think there is in most states. I do not know about New York.

The Master: I do not know.

Mr. Hayward: Suppose there is a law which says 47295
that bricks sold to the public shall be eight inches long, four inches wide and two inches high, that the brickmaking engineers find by making their moulds a certain size that some days some bakes in the kiln come out according to the standard of the law and a lot of days they do not, they fall below, what are those engineers going to do? They are going to make that mould a little bit bigger, are they not, if it is a strict compliance with the law that is in question?

47286 The Master: I do not think that is a fair comparison.

Mr. Hayward: I think so. They cut their cloth too short. Even if they had to stand a loss to protect the consumers of that commodity they would have to do it.

The Master: I do not know whether in a six-months period from January to August, 1917, the average works test was 23 1 2 or not, but if it averaged 22—

Mr. Ransom: What year are you asking about?

The Master: January to August, 1917, the period
47287 that Mr. Hine covered in his test. If that showed an average of 22 all that time, is it not a fair presumption that 23 1 2 at the works will show 22 candle power? Isn't that fair judgment?

Mr. Hayward: No, but I will say this: I am familiar with that particular portion of Mr. Hine's testimony, and if it showed an average of 22, and if it showed, as you say, the gas running up, and a lot of times to 23 1 2, I do not think that gives this company a clean bill of health at all, but it simply shows they were very awkward in making the gas.

It seems to me, and it would seem to anybody, that these people did come up to 22 candle power and
47288 can do so without ever going up to 24. It does not make any difference if they have to go up to 26 or 28 to get 22 candle power out to these people; that is what the law says they have to do. You did not make the law and I did not make the law, and I say it is the same as any other provision. It is not for the protection of a man at high noon, it is for the protection of a man who wants to cook his breakfast, whether it is a warm day or a cold day. It is for that purpose, and this company has not only failed to show their compliance with that law, but the testi-

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mony is so clear and convincing that they have been violators of that law that they should have no standing in a court of equity.

The Master: Now, I will let Mr. Chambers finish.

Mr. Chambers: What I was going to say a moment ago was substantially along the lines stated by Colonel Hayward, and it is this: They are gas makers; they are confronted here with a statute that says they must furnish *22* candle power. Now, things are as they are, there is the law, and they have got to obey it. It was their business to make the candle power at the works sufficiently above *22* so that when it was on a mile away from the works, where it was to be 47300
measured and tested, it would be *22*.

The Master: What do you say they should have made at the works?

Mr. Chambers: Whatever that is. I think Colonel Hayward is correct about it, that if they had made, say, 24—well, I know according to the testimony the engineers say gas loses in candle power a mile from the works about 1 to 1 1/2.

The Master: But if they make *23* 1 *2* they figure that would reach *22*.

Mr. Chambers: Then they should have. That is on the average. They should have made enough candle power at the works to see that it was *22* out there, 47301
and run over a little bit, if necessary. They were engineers, they were the ones that were obliged to furnish the public with this required quality.

Another point, I wanted to say, and I have a good deal more to say about candle power, on the 16th day of January, 1919, George B. Cortelyou swore under oath to this complaint, and on that very day, January 16, 1919, the Consolidated Gas Company, according to their own admission, was furnishing to their consumers a candle power measured in accordance with the statute of only 20.54.

47302 The Master: What was the works' test that day?

Mr. Chambers: Well, I have not that on here; if I did I would give it to you. This just shows the test that offsets the City test.

The Master: Suppose in that day their works' test was 23 1/2.

Mr. Hayward: That does not prove anything.

Mr. Chambers: It could not possibly be.

Mr. Hayward: What could that prove? Did the law say anything about the candle power at the works?

The Master: No.

Mr. Hayward: Then do not repeal the law, let the
47303 law be as it is. I am against the law. I would like to see it repealed and another standard set up, and so would everybody who has any interest in the economical welfare of the people of this town, both the companies and the consumers. But we did not make that law and you did not make the law; you have no right to change the law.

The Master: No, I do not want to, Colonel.

Mr. Hayward: But you are talking repeatedly of what they made at the works.

The Master: No, but take a little of that month, where it says 22 and 22 plus, and the works test was 23.50, just the same as it was on the 16th of January.
47304 Do you see what I mean? What is this company required to do? Aren't they required to shift their method of operation from hour to hour and keep somebody testing this gas a mile from the works every minute of the day, and the minute they find it drops below 22, to do something at the works, or have they the right, finding that 23 1/2 as a works standard, or generally speaking, except for something happening in the main, like this dry main, produce 22—don't they comply with the statute by making the 23 1/2 there?

Mr. Hayward: No, they do not, because I will say in case of an accident or in case of anything out of

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the usual or ordinary operation of the works, yes, I agree with you heartily, if something slops up out there they would feel better, nobody in the world would blame them for that. But their experience must have been as you state it was, taking your words, making *23* 1/*2* candle power at the works, did not get *22* candle power to the consumers, and when they knew that, when they realized it—and the figures here show they must have for years—then it was their business to make *24* candle power, or *25* or *26*.

The Master: There is where you and I do not agree. There is evidence in this case that for six or seven months that same standard at the works did 47306
produce *22* at the station.

Mr. Hayward: What has that got to do with it?

The Master: Running into the summer months of July and August.

Mr. Hayward: What has that got to do with it?

Mr. Ransom: The Supreme Court took six months' average to see if the company had complied with the law.

The Master: Who took?

Mr. Ransom: The Supreme Court took six months' average.

The Master: In this same case?

Mr. Ransom: The prior 80-cent suit. 47307

The Master: I did not think they discussed it.

Mr. Ransom: They did. They figured it on the basis of a six-months' average.

The Master: I do not recall the Supreme Court decision referring to it at all.

Mr. Ransom: I will have it here in the morning.

The Master: I think I have got the decision here.

Mr. Hayward: Just a word more on that. It is just exactly like the old trial, when the man was being tried for stealing the pig and two or three witnesses swore they saw him steal it and he brought

47308 fifteen who said that they did not see him, the Justice of the Peace acquitted him. There is just as much reason in that as in your argument here.

The law says they have to furnish 22 candle power. Suppose they did comply with the law in the middle of the day, for a period of six months: I say that the record here shows a substantial failure to comply with that law: I say we were not responsible for it and you were not, and though it may be a hard law it is the only rule that you can apply. Not the amount that they made, and not the amount that their wise engineers said would be good enough—that is not
47309 what the law says. It says that the people of this town have got to get 22 candle power.

The Master: Well, I do not believe the courts will ever hold this company to the point of wasting material, with the idea that, because on a few days for some reason it drops below 22, they have got to provide 23 on other days. I do not think so. Judge Ransom calls my attention to 212 U. S. I do not know just what page.

Mr. Ransom: Page 52.

The Master: Is it 52—the same page?

Mr. Ransom: Yes.

The Master (reading): "It appears that the aver-
47310 age candle power actually produced in the first six months of the year 1905 was 22, while 20 candle power was exacted by the law. But for the last six months of that year, while 22 candle power was exacted, the average amount was 24.19. This expense was included in the operating expense of that year, which resulted in the net earnings above mentioned, while the company was complying with the requirements in that particular."

Well, that has nothing to do with it.

Mr. Chambers: There was not any contention that they were not complying with the law.

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Mr. Ransom: They made their computations on the basis of a six months' average.

The Master: You see at the beginning evidently they wanted to play safe and they were producing gas to the consumer at 24.19. Well, they are not required to do that. They evidently based on that experience reduced the amount of oil that they used to bring it down to 22 to the consumer.

Mr. Chambers: All I have to say is that citation is pretty weak.

Mr. Ransom: That is at the time that this statute was thought to be a penal statute, with the penalties passed on in the 80-cent case.

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Mr. Chambers: Let me add just one more matter. I am not saying anything here about the failure of the company to comply with the candle power day after day in 1916 and 1917 and 1918, and I am not saying about what would be disclosed by the records of the company had you permitted us to back of 1916. That is a closed chapter because you would not allow us to go into it. You started us off at 1916, over our protest.

Now, I call your attention, and I will step to the next month, which is February, 1919, after the company came into the court of equity asking the Court to give them relief against a statute. What do we find? We find you violating the law fourteen times out of the days in February of 1919, after the action was brought.

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The Master: Yes, and in March they ran as high as 23.85 on one day.

Mr. Chambers: Your Honor is always picking out where they are above; pick out some of the ones below.

The Master: No, I am going to pick out where they are below in March, too. They ran as high as 23.85 in March, and I do not know what quantity or what

47314 their test was, but it was 23.68—the company's test in 1919 was 23.85, yours was only 21.71 on that same day.

Mr. Hayward: I do not know, but it might be interesting to look and see when the answer of the Public Service Commission was filed, alleging that they had been violating the law. It was probably the day before it went up.

Mr. Chambers: It does show better along about the time you find your answer.

The Master: To illustrate my point, on the 4th of March the City's tests showed 22.90; on the very next
47315 day the City's tests showed only 21.04. Suppose the same quantity of oil and the same candle power was produced at the works on those two days, would you say that that was not a fair method of operation?

Mr. Hayward: I would say it was not a fair method of operation if in the week before and the month before and the year before they had found out that a light drop in temperature or something would produce that condition, and they shut off something that the consumer was entitled to have.

Mr. Ransom: Here is another paper that is in evidence (handing to Master).

Mr. Chambers: Wait a minute, we did not put that
47316 in evidence.

Mr. Ransom: Some more from the manufacturing books of the 21st and 99th Street stations, with the City's tests.

Mr. Chambers: Why are you handing that to him when I am handing him that same thing? Do you claim yours are better or superior to mine?

The Master: This is only the works' test.

Mr. Chambers: We are not interested in the works' test.

The Master: But I am.

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Mr. Chambers: The Legislature did not say what the candle power should be at the works.

The Master: I think it is the only way of indicating a violation of or compliance with this statute.

Mr. Chambers: We cannot go and pick out some other place than the statute says.

Mr. Hayward: Do you think the only fair way to determine it is to take the test at the works?

The Master: I say I think the only fair way of determining whether this company honestly complied with this statute is to see whether they established a standard at the works which ordinarily would show 22 candle power out on the district. That is my 47318
judgment about it.

Mr. Hayward: Why go to that circuitous route, when the law is clear and plain as to the place the tests should be made, and we have those particular tests? Was it necessary?

The Master: Because the tests are not uniform; because one day or one hour it is more and another day or another hour it is less.

Mr. Hayward: Certainly, that is the trouble, and the law said at all times it should be 22.

The Master: Well, it is quite apparent it cannot be the same at all times except by a wasteful expenditure.

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Mr. Ransom: Let me call your attention to the fact that the period covered by the Hine tests, the first eight months of 1917 when he found the candle power was substantially above 22, the quantity of oil used was not even as high as 23 1/2—or the candle power made at the works was not as high as 23 1/2. That is, during the early part of 1917, as tested by the witness Hine, it was even less than 23 1/2 at the works and produced more than 22 candle power on the district.

47320 Mr. Chambers: I did want to say before we closed for the day that way back in the beginning of this case the Master agreed with us that the moment we showed or it appeared that this company had violated the law, as you said, you would dismiss the complaint.

The Master: Why, yes, it is the question we are discussing right now, whether they did violate the law.

Mr. Chambers: Then there you are. I will have a lot more to say about it.

The Master: That is a question of fact that I have got to determine, whether they violated the law.

47321 Mr. Chambers: You remember when they rested their case they were not brave enough to show you anything about it.

Mr. Ransom: The defendants had shown it.

Mr. Chambers: Yes, we had shown it.

Mr. Ransom: They had shown its compliance.

Adjourned to Tuesday, March 30, 1920, at 9:30 o'clock A. M.

47322

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 47323

Before ABRAHAM S. GILBERT Special Master.

NEW YORK, March 30, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 47324
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Chambers: When we closed for the day we were speaking of candle power and I had not yet finished that branch of the case by any means. I called the Master's attention to the admission by the company that it had not furnished the consumers 22 candle power for many, many days in January, 1919, and that on the very day the complaint was being sworn to by the president of the company they were concededly 47325
furnishing a candle power less than that prescribed by statute. In the very next month, February, 1919, we still find the company according to its own admissions, its own tests, furnishing a candle power to its consumers 14 days out of 28 or 29, of a candle power considerably below the statutory requirements.

The two months I have been speaking about are January and February. Lest someone might say that we picked out winter months, I will skip to October, 1919. We find from the company's own admission, the company's own tests at the 79th Street station during that month, while the case is pending, while

47326 it is being tried—we find the company, according to its own admissions and its own tests made at the 79th Street station where there could not be any possible question about over-pass and by-pass, admitting that it furnished the consumers a candle power of a quality less than that prescribed by statute.

The Master: What month is that?

Mr. Chambers: October, 1919.

The Master: I confess I am very much puzzled about those things.

Mr. Chambers: 13 days.

The Master: Assuming their statement is correct
47327 in their works record—

Mr. Ransom: This is taken from the works records.

The Master: I say assuming the statement in your works record is right.

Mr. Chambers: I said last night that I think it is immaterial what it was at the works.

The Master: I know that, but assuming that figure is right, what puzzles me is why they should show a works test of 25.86 average during October, 1919.

Mr. Ransom: That is 21st Street.

The Master: Oh, that is 21st Street. Well, whichever one it is, 21st Street and 99th Street, 24.73, and
47328 it should test as low as you say—

Mr. Chambers: That is easily and readily explained. When they made the works test it might have been eight o'clock in the morning, and when they made the test for candle power it might have been four o'clock in the afternoon.

Mr. Ransom: The works test is an average of every hour during the day.

Mr. Chambers: You did not prove that; you did not prove anything about candle power. You relied on shooting holes in our proof. So the Master has got to judge this case by the proof that is in. You did not prove anything about the tests.

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Mr. Ransom: That was testified to last September.

The Master: Do not argue it with Judge Ransom.

Mr. Chambers: Here in October, 1919, while this case was going on, they are furnishing a candle power below the statutory requirement, at 79th Street, according to their own tests and their own records, 13 days out of 30 or 31, and there are some days—6 days—in which there are no tests made. So, 13 days out of the number of days that tests were made—

The Master: What was the highest that it ran?

Mr. Chambers: During that month?

The Master: Yes, what was the highest test?

Mr. Chambers: 23.45. I get it right here. It is 47330
all 22 except that one.

The Master: It is all below 22 except one which is 23.45?

Mr. Chambers: No, it is all below 23 except that one.

Mr. Hayward: The Master won't forget that that law provides not a mile from the works, either, but a mile from the holder.

The Master: Yes.

Mr. Hayward: Which makes a big difference, and which they should have foreseen.

Mr. Chambers: There is another one here which is 23.25.

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The Master: Why should the company, if it intended to violate the law or if it did not intend to comply with the statute, on at least a few days a month run as high as 23.20 or 23.40?

Mr. Chambers: There is the law on the books; it is the law of the land, and it is their business. Nobody testified here that they could not furnish 22 candle power.

The Master: Of course not.

Mr. Chambers: I mean there is no testimony here of the impracticability of the statute.

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The Master: No, of course they can.

Mr. Hayward: They may run it up for the very purpose the Master has in his mind now, so nobody could say it was continuous violation of the law.

The Master: I should not draw that inference.

Mr. Hayward: I will be frank with you and say that I would not either.

The Master: They would not have had it less on two days, either; they might have had it less a number of days.

Mr. Chambers: I am not speaking of repeated violations in 1916 or 1917 particularly, or 1918, where
47333 during the period of toluol operation they ran way down to 13, 14, 15 and so on. They are way below.

The Master: What do you contend the proof shows for the six months of 1917?

Mr. Hayward: I have got a table somewhere that has all of the years.

Mr. Chambers: The first six months of 1917 I have not had tabulated, but it shows repeated violations.

The Master: Yes, but there is another point about it, Colonel Hayward. I got the impression while the witnesses were testifying about candle power tests that so much depended upon the observation of the par-
47334 ticular individual; in other words, comparing the light of candles with the light of the gas.

Mr. Chambers: That only relates to a decimal, say .01.

The Master: I don't know.

Mr. Chambers: That appeared in their calculations.

The Master: Take, for instance, the first six months of 1917 the company's test shows one thing at the works, the company's test shows another thing at the testing stations; the City's test shows another thing at the testing stations, and Mr. Hine, who was making an

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investigation over a period between January 1st and August 1st, 1917, for the purpose of determining apparently what the heating value of a *22* candle power gas was—that was this point then, the Public Service Commission was trying to establish a basis for British thermal units—he reports that out of 800 or more tests —more than that, but I have forgotten the number— over a long period of time, seven months or more, it showed an average of over *22*.

It seems to me I have got to take into consideration all of the facts as indicating the difficulty of maintaining an absolute *22* candle power at every hour of every day on every test, and to take Hine's report that for 47336
a period of six months at a time—

Mr. Ransom: Eight months.

The Master (continuing): Or eight months at a time, when it could not have been made for purposes of evidence, it ran *22*, showing their good faith.

Mr. Chambers: He reported they were violating the law in that report.

The Master: Yes, I know that.

Mr. Chambers: And he has the tables.

The Master: Yes, but for six or seven or eight months his report is over *22* average.

Mr. O'Brien: Do not forget, your Honor, that you kept out of the record—and in this I think you are in 47337
serious error—the story of this company for a number of years.

The Master: It would not do any good; it would not help us any.

Mr. O'Brien: But you are talking about good faith.

Mr. Hayward: It would not help the company any, no.

The Master: The situation will be the same, I will assume, in 1914, 1913 and 1912; and taking a period from 1913 to 1919, instead of 1916 to 1919, I would

47338 still hark back to this six months' test period as perhaps the best test of them all. That is my view of it.

Mr. Ransom: What is a violation, is the question.

The Master: I do not know. I will not hear any more on candle power, Mr. Chambers. I have expressed my view and that is what is going to be my report.

Mr. Chambers: I wanted to call your attention to the fact that Mr. Addicks and Mr. Woods both testified that they made tests of candle power at these places, and Mr. Addicks, as I remember it, said that
47339 they made tests in the ordinary, approved way, without going into detail.

The Master: I shall find as a fact that this company has substantially complied with the statute, for the reasons I have expressed in the record here.

Mr. Chambers: That does not surprise me.

The Master: There is no use arguing with me, it will not change my mind.

Mr. Chambers: I wanted to call your attention to the fact that in October, 1919, we find them still, the averages of the month, below the 22. We also find them violating the law day after day.

What have you to say as to the rule of law that
47340 whenever a party who in an action seeks to set the judical machinery in motion and obtain some remedy, has violated conscience or good faith or other equitable practice in his prior conduct, then the doors of the court will be shut against him, the court will refuse to interfere on his behalf, acknowledge his right, or award him any remedy?

The Master: I accept that rule. The only trouble is I have not the fact to apply that rule to. I am finding the fact against you, not the law.

Mr. Chambers: It is undisputed proof, it is their own admission.

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The Master: I have given you the basis of my conclusion and I do not want to hear any more on that. I do not want to hear any more about candle power; I have reached a conclusion on that.

Mr. Chambers: I take an exception. I did not expect that I would make very much impression here on candle power.

What is the prevailing price for coal, and what was coal worth in 1918 or any of the years in question here? What did the company pay for coal, and so on.

I say that there is not any proof in the case whatever on which you can base a finding as to the cost of coal at any time while this case has been going on. 47342
And you said so yourself. I had the coal contracts marked for identification; they were in court. On purpose I was watching them, to see if counsel would offer them in evidence. He did not. There is no proof at all—competent proof—of the price of coal.

The Master: Did not Mr. Gawtry testify as to what they paid for coal?

Mr. Chambers: You said you would not take them without further proof. No, he did not testify in detail as to what they paid. You said over and over again, and I can give you the reference, that they would have to show that the contracts they made for coal were made in good faith.

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The Master: Yes.

Mr. Chambers: That they are actual contracts?

The Master: Yes.

Mr. Chambers: And that the price was fair and reasonable, and all that.

The Master: Yes.

Mr. Chambers: And you said you would not take Mr. Gawtry's prices for coal.

The Master: No, I did not say that.

Mr. Chambers: Yes, you did.

The Master: I said I would oblige them to show

47344 that it was a reasonable price, paid on contracts honestly made, and in good faith; but I did not say that I would not accept Mr. Gawtry's testimony if his testimony showed the facts.

Mr. Chambers: No, you said just that in substance.

The Master: Of course I made the statement in answer to something you said that the mere fact a certain price was paid for coal would not prove any element. I think Colonel Hayward was right, that I should not argue much during the course of the trial and express my views as I went along. Evidently it did not do any good.

47345 Mr. Chambers: I say there is no competent proof of the price of coal.

The Master: All right, proceed.

Mr. Chambers: Then here is another failure of proof—the number of men actually needed in the making of gas, actual in accordance with their experience. You have made some remark about that. I would like to refer to the folio if you care to hear it, on that. There is a failure of proof of the actual number of men needed and the actual materials needed. Let me see if I can get it.

The Master: Do not get it, Mr. Chambers, because I undoubtedly said what I did in answer to something
47346 that had been said, or some suggestion that occurred at the time; and then I will have to go a little further and show you where the modification is, as I have shown you half a dozen times in other connections. That does not get us anywhere. You say there is not any proof of the number of men required.

Mr. Chambers: Actual number of men required. That was hypothetical.

The Master: I assume that that is based upon the claim you made yesterday, that in 1918 the proof is that they had additional men for painting holders and also, because of war conditions, to watch the works; is that your point?

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Mr. Chambers: No, you suggested at one time, or you said to Judge Ransom, to bring in the superintendents and let you know.

Mr. Ransom: The coal contracts were marked as defendants' exhibits (handing the Master).

Mr. Chambers. The coal vouchers.

The Master: The coal vouchers, yes. Judge Ransom called my attention to pages 6812 and 6813 of the record, which would indicate that the defendants offered in evidence and had marked the vouchers for coal purchased and delivered.

Mr. Ransom: 1918 and 1919, both, being Exhibits AA-20, AA-21, AA-22 and AA-23.

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The Master: Isn't that some proof of what they paid for coal?

Mr. Chambers: I do not remember. I do not think it is competent proof. I do not know why those were offered, what purpose they were offered for I would have to look it up. I do not think the vouchers are competent proof.

The Master: But you offered them, or one of your associates did.

Mr. Chambers: I do not know whether they are offered for identification or are in evidence.

The Master: No, it says in evidence.

Mr. Chambers: I do not know about that. There are a good many things said to be marked in evidence which are marked for identification. I find them right along.

47349

I gather from what you have said heretofore that you are under the impression you will never reach the question of a rate base.

The Master: No, I would like to hear you on that. I think I will have to report on it. I do not know whether it will be important in the ultimate conclusion, but I think I will have to report on it. Before you get to that rate case, have you in mind an answer to

47350 Judge Ransom's claim that he made yesterday, that irrespective of particular property or particular items of property, or whether one particular lot is or is not used and useful, in order to deliver gas to a consumer the necessary manufacturing and distributing plant necessarily represents to the consumer $4 a thousand feet of gas, of value?

Mr. Chambers: I do not know anything about that — what he means by that.

The Master: I understand what he means by that, and that is this: You have undertaken to show a particular piece of property here or a particular piece
47351 of property there is not used or useful in the gas business.

Mr. Chambers: Right

The Master: Whether a particular piece is or is not used or useful, certain property must necessarily be used and useful to make and distribute gas. You have got to have a manufacturing plant, and you have got to have the distributing system. Judge Ransom's contention is that, taking any method of calculation, any form of calculation, any basis of calculation the consumer after all gets when he has gas delivered to him the use of at least $4 worth of property. I would like to know what you have to say about it.

47352 Mr. Chambers: Why, that seems ridiculous and absurd to me. What property is necessary is a question for proof.

The Master: But it does not seem so absurd to me, otherwise I would not have asked you.

Mr. Chambers: It might be an old and dilapidated plant.

The Master: I do not care how old or dilapidated it is.

Mr. Chambers: I do. The courts are not giving a return on any property unless the court finds the value of it.

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The Master: But, Mr. Chambers, the important thing to the consumer is to get a thousand feet of gas, is it not?

Mr. Chambers: Yes.

The Master: It is not at all important to him whether the factory is painted red or blue or green, is it?

Mr. Chambers: But don't you see the Consolidated Gas Company might have some ramshackle old dilapidated plants that were furnishing the gas to the consumers this year and maybe half of next year, and then collapse.

The Master: How does that interest me? 47354

Mr. Chambers: The consumers are not obliged to carry that old dilapidated plant and pay a return on it as if it was worth three times as much as it really is.

The Master: But that does not answer my question at all.

Mr. Hayward: But I will answer your question. What is the use of talking about what the witness Ransom or witness somebody else says of the property that is going to be required to make gas, and that it will be $4 per thousand feet of gas? That is what he says. What is the use of fooling with a lot of things like that, when you have their own figures, and the 47355
maximum that they have ever claimed, with all their used or useless property, that they have hung on to, does not run it over three and a half.

Mr. Chambers: Some of the proof is a good deal lower than that.

Mr. Hayward: The dispute in the proof is a good deal apparent; but taking their wildest possible claims for the property that can be devoted to making gas, as I recall it it is three and a half.

The Master: But they have not attempted to prove reproduction cost with or without depreciation.

47356 Mr. Hayward: But that is only one element of the proof. Take their utmost claim, their maximum claim, they say you cannot furnish gas to a consumer without at least $4 worth of property invested for every thousand feet served.

The Master: No, they do not say that.

Mr. Hayward: Yes, they do. That is what they said yesterday.

The Master: No, they say the property necessarily needed to make and deliver gas to the consumer—

Mr. Chambers: Who says it?

The Master: Judge Ransom.

47357 Mr. Chambers: Yes, the witness Ransom. I object to his testimony.

The Master: That the property necessarily used in the making and delivery of gas to the consumer is worth to the consumer, as a value to him—not that they claim that much, but as a value to the consumer, at least $4.00 a thousand cubic feet.

Mr. Ransom: And that the investment therein is at least $4.00 per thousand cubic feet.

Mr. Hayward: How do they mean value to the consumer? Do they mean that we have to give them a return on property that they have not got?

The Master: No.

47358 Mr. Hayward: Certainly. That would be $72,000,000 in this case.

Mr. Chambers: That shows how ridiculous it is.

The Master: Judge Ransom pointed out yesterday that the Public Service Commission in several cases—I have not looked at the report and I have not checked it up, and what I want to know is whether I have to check it up—has found the value of gas making apparatus, plant, buildings and distributing system to represent a value in excess of $4.00. He claims it runs as high as $4.80 something.

Mr. Ransom: $4.85.

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The Master: $4.85 in several cases. If other plants selling gas have property that makes gas and distributes it, that represents a value in the opinion of the Public Service Commission of $4.85 per thousand cubic feet, why is not that an element for me to consider in arriving at the fair value of the property used by this company?

Mr. Chambers: Why, it is ridiculous.

Mr. Hayward: It has nothing to do with this case or with this company. There is proof that it is 2 1/2 instead of 4—exactly 2 1/2.

Mr. Chambers: It may be some dinky plant somewhere. I will defy counsel to cite any authority in 47360
this land, judicial authority, courts, where they have held any such ridiculous rule as that.

The Master: Well, I do not believe there is any decision, but I am going to be the first one to establish that ridiculous rule, because I think it is right.

Mr. Chambers: You may be a prestidigitator and you may be able to imagine into this case some property that they have not got, but that will not make evidence.

The Master: I am convinced, Mr. Chambers, of this—that plant that manufactures and distributes gas and delivers it to the consumer is worth X dollars per thousand cubic feet to the consumer, irrespective of 47361
what it costs or what its present condition is, or how new it is or old it is, so long as the consumer gets his thousand cubic feet of gas, when in that connection I hold the cost of producing down to a point where I am not adding to it excessive repairs and replacements and items of that kind which would be peculiar to an old and dilapidated plant.

Mr. Chambers: I do not know what you mean by X dollars. The Court has defined what the investment is here, what the rate base is, founded on testimony.

The Master: No, that is not the law at all.

47362 Mr. Chambers: If it is some set rule or formula—

The Master: No, the courts said—and at the expense of having Colonel Hayward say that I discuss matters too much. I think this is the time to do it—the courts have said that the utility corporation is entitled to a fair return upon the value of the property used in making and delivering gas. Am I right about that?

Mr. Clark: Their property.

The Master: Fair value.

Mr. Clark: Of their property.

The Master: Of their property, yes. What fair
47363 value? Scrap value? On the basis of a condemnation by the public? Fair value to a new company that wants to come in and buy a going and operating plant? Or is it the fair value to the consumer, having in mind that the consumer has his gas delivered to him?

Now, I am going to find the kind of a fair value that I think the courts really mean.

Mr. Chambers: While you said you would not pay any attention to precedents or decisions of other courts, still there is some unwritten law in this land that the courts have laid down.

The Master: That I have to find the fair value; but it does not say which fair value, and I am going to
47364 say which fair value the courts mean. They have never done it.

Mr. Chambers: They have not?

The Master: I know they have not. No decision I have ever read has pointed out that it is the fair value to the consumer. That is the value—what it is worth to the consumer.

Mr. Chambers: I am representing the consumer, and I say that is ridiculous, any kind of rule like that. I am speaking for the consumer.

The Master: I would not care if this company paid four hundred million dollars for this property, and I

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would not care if a dozen experts testified that in order to rebuild it or reconstruct it it was worth $2,000,000, unless I conceive it to be of that value to the consumer; if the consumer can get his gas out of a plant that only cost a hundred million dollars, that is all it is worth to the consumer. On the other hand, if it cost this company 14 cents or it is worth $14,000,000 to the consumer, that is the fair value.

Mr. O'Brien: That reminds me of a proposition I tried to bring up, but you closed the testimony out, and that was an attempt to show what the value of the gas was to the consumer. For instance, take it as fuel, supposing a mathematical and scientific analysis of the price being paid would indicate practically $40 a ton, or would be the equivalent of paying $40 a ton for coal, what would you say about the value to the consumer of the gas?

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The Master: I am not interested in that; that is not the issue here.

Mr. O'Brien: But you closed out that line of investigation.

The Master: Because it is not in this case.

Mr. O'Brien: Of course it is in the case; it is the fair value of what they get. That is an element. It is not so often covered in rate cases, but it is important just the same.

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The Master: Mr. Chambers, I have indicated my view about it, and I would like to hear all you can give me on that.

Mr. Chambers: On behalf of my associates and myself I would like to inject right here in the record some of the rule that I suggest the Court follow. In People *ex rel.* Kings County Lighting Company v. Willcox, the Court said:

"The Commission said the cost of reproduction new is not necessarily an indication of present value. Depreciation and deferred maintenance are important

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factors. It it held that the proper method to ascertain the value of the tangible property was to take the amount obtained by subtracting from the cost of reproduction its accrued depreciation."

In the Spring Valley Water Works Company v. The City and County of San Francisco, the Court said:

"The lower court found the present cost of reproducing the plant, but failed to take into account the fact that an old plant is worth less than a new one. In each, the result was a reversal.

"It is impossible to measure accurately such loss until it has matured. When a machine is worn out,

47369 we know its original value is gone; but while the machine is in use the amount of deterioration is largely a matter of opinion. Here the difficulties of the problem are increased by the fact that a very large portion of the most valuable construction, such as pipes, masonry and concrete work are concealed in the ground or under water. I find the annual depreciation of this plant to be 1% per annum for cast iron pipe, 2% for wrought iron pipe, 2.5% for pump engines, flumes and wooden structures, and 5% for boilers. Thus I have ascertained the annual depreciation to be $212,983."

Judge Hughes says, in the Brooklyn Borough case:

"As was said by the Court of Appeals in the case

47370 last cited, the cost of reproduction less depreciation rule seems to be the one generally employed in rate cases."

I think, without taking up the time further, the rules which I have stated and which have been reiterated over and over again, illustrate the rule which the Court has laid down in rate cases; and I do not think at the present time the court would be justified in departing from such a well settled rule as I have stated.

The Master: You still have not given me an answer to Judge Ransom's contention that the fair value of an operating and distributing plant is at least $4.00 per thousand cubic feet sold.

47371

Mr. Chambers: Yes, I do. I say that that is immaterial and outside of the question; and how you can make the consumers pay a return on an hypothetical figure—

The Master: No, I am not talking about the question of law, I am talking about the fact, the value.

Mr. Chambers: There is not any proof in here of that. Where is there any proof?

The Master: He says there is. He says there is proof of the fact that the Public Service Commission on many occasions has valued manufacturing and distributing plants.

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Mr. Chambers: Some dinky plant somewhere.

The Master: I do not know.

Mr. Chambers: I do not know.

The Master: He claimed that some of the plants were as large as the Consolidated plant.

Mr. Chambers: He has made some extravagant claims throughout the case, you know.

The Master: You cannot simply brush it aside and say there is nothing to it, you know.

Mr. Chambers: Give us the page of the testimony and we will discuss it.

The Master: I understood he referred to some report of the Public Service Commission.

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Mr. Chambers: That is not proof in this case.

The Master: But I understand he brought it out or claimed to have brought it out in the cross-examination of Mr. Maltbie.

Mr. Chambers: Is it some "sight unseen" matter? Give us the page of the testimony and I will discuss it.

Mr. Ransom: Read the cross-examination of Mr. Maltbie. I brought out the necessary facts.

Mr. Chambers: I have not anything further to say if he bases it on what Mr. Maltbie said. If you can base it on anything that Mr. Maltbie said, on any such

47374 ridiculous theory, I am satisfied; I have not anything more to say about that. Is that the only place where you say there is any testimony like that?

Mr. Ransom: No.

Mr. Chambers: Where else?

The Master: I cannot permit that kind of discussion.

Mr. Chambers: But you want me to discuss something that I say is not in the record.

The Master: If you do not want to discuss it we will pass along, that is all.

Mr. Chambers: How can I discuss something that
47375 I have never heard of? If he will call my attention to it I will discuss it.

The Master: What have you to say about Mr. Woods' testimony that a manufacturing plant, to make gas, is worth $156 and some odd cents a thousand cubic feet capacity?

Mr. Ransom: Was worth.

The Master: Well, it is only a year ago.

Mr. Ransom: At the time he figured.

The Master: In January, 1919.

Mr. Chambers: What does he mean, a ten-million plant, or what kind of a plant?

The Master: You heard his testimony.

47376 Mr. Chambers: I do not give that any weight.

The Master: His testimony in figuring what they ought to pay the New York Mutual is that in his opinion a thousand feet capacity was worth about $157, approximately, and he based some of the charges or credits upon that. His sworn proof is, and he reiterated it when I asked him about it, that in his opinion that was the value of manufacturing plant in January, 1919, $157.

Mr. Ransom: Exclusive of land.

The Master: Exclusive of land.

Mr. Chambers: I do not give that any weight at

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all. I see now that the Master has got some fanciful theory in mind.

The Master: Is there any proof to the contrary in this case?

Mr. Chambers: What I have to say is based on court decisions and the proof in the case.

The Master: Is there any proof to the contrary in this record? In other words, is there any evidence contradicting Mr. Woods' statement under oath that a manufacturing plant in January, 1919, producing a thousand feet of gas—that is capable of producing a thousand cubic feet of gas—is worth $157?

47378 Mr. Chambers: Certainly, we proved the rate base here; we showed you what this plant cost that is producing this gas. We showed the facts. That is just what I was coming to, the rate base. We showed you exactly the investment that this company has got in this plant, in the mains, services and everything.

The Master: But that is not necessarily the value.

Mr. Chambers: What it cost them?

The Master: Yes.

Mr. Chambers: I just read you the rule, where the Court said they would pay costs less depreciation where the other side has not brought in proof of the value.

The Master: Proceed.

47379 Mr. Chambers: What the other side did here was first to offer testimony by Mayer and the dead men, opinion value; then later they jumped into book costs. In other words, there is no consistency; first opinion evidence of value and book costs, and back to opinion evidence and book costs again. I think that the investment that this company has in the plant and the investment that this company has in the real estate, the investment this company has in the services and mains, is of great importance in this case.

The Master: Then your position is that I have got to take their investment?

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Mr. Clark: Yes.

Mr. Chambers: I say cost—what it costs them here in this case.

The Master: What did it cost them?

Mr. Chambers: I was just coming to that.

The Master: I mean, what did it cost this company?

Mr. Chambers: I am going to tell you now right from the table.

The Master: Not some other company.

Mr. Chambers: This company. You mean not the predecessor company?

47381 The Master: Yes.

Mr. Chambers: Well, you know very well that we treated it as what it cost the predecessor company, and we continued that down.

The Master: Do not waste time discussing those figures; the tables will show that.

Mr. Chambers: Then I do not care to discuss the rate base if you do not care to hear it. I do not care to discuss the case further if you do not want to hear it.

The Master: No.

Mr. Chambers: If your mind is made up.

The Master: My mind is not made up at all, but

47382 when you talk about the investment of this company and the investment of some predecessor company, or what a predecessor company paid for it, you are not talking about the same thing. When you talk about what some predecessor company paid, the tables are in evidence and you do not have to take that up.

Mr. Chambers: I know the door is closed here, but just let us take franchises.

The Master: Yes. I will hear franchises—seventeen million dollars of franchises.

Mr. Chambers: They claim seven million and something for franchises.

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The Master: Seventeen million dollars.

Mr. Ransom: $7,781,000.

Mr. Chambers: Let us see what there is about that.

The Master: There is nothing on that. There is not any proof at all on that, in my judgment.

Mr. Ransom: Oh, yes, we put in the proof on which the Supreme Court based its findings.

The Master: Unless I am bound by the Supreme Court decision that this company, having issued stock against that seven million dollars, claimed the value of franchises, I should not find any value for the franchises to this company—that is, that they paid anything for it, or that they were entitled to any return on it.

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Mr. Ransom: The situation as to that is this: We think independent of any proof in the record your Honor would be bound by the finding of the Supreme Court of the United States of $7,781,000 in the prior case.

Mr. Chambers: Do I get an opportunity to discuss this question, or don't I?

Mr. Ransom: It is duplicated in this record, the proof on which the Supreme Court based its findings in the prior case.

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The Master: But the Supreme Court in the prior case practically threw out the proof and said that you had issued stock against it, that you had not anything for it, or your predecessor companies, the fact that you had a monopoly of it, or your predecessor companies did, and they practically rested their conclusions, as I understood the decision of the United States Supreme Court, on the point that the State had in effect authorized you to capitalize those franchises. The only question is whether I am bound by that ruling of the Supreme Court in the prior case.

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If I am not I should be inclined to disregard the franchise value as part of the rate.

Mr. Chambers: Mr. Carter said under oath: "There is no method of evidence by which the value of the tangible rights to lay and maintain pipes in the streets can be determined."

The Master: I think on this point, Mr. Chambers, as I have tried to show you, you will have to get me away from the United States Supreme Court decision. How can I escape that, that is what I want to know.

Mr. Chambers: You know what will happen to the
47387 franchise when they come to consider it on the merits? They did not have to consider it before.

The Master: Why not?

Mr. Chambers: Because they dismiss the complaint, and it was not a vital question. I want to read the rest of this here:

"There exists no market or demand for such right, permission or franchise. The price at which complainant's franchises or rights would sell under ordinary circumstances is merely nominal. The municipal authorities of the City of New York have never fixed any amount as a consideration for granting such franchise and the right to lay mains and pipes in
47388 the street has always been procurable from said municipal authorities, without the payment of any monetary consideration therefor. The number of said franchises which may exist at any time has never been limited by said municipal authorities. The value of said right to occupy the streets does not exceed the cost of procuring such a right from the City, and that cost is nominal."

That is from the record, pages 8438 and 8439.

I am satisfied to stand on that. When the case was up before the United States Supreme Court, if that

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question of franchise had been the turning point, then you would have had a decision from the Court that would have some value. But the Court there dismissed the complaint, and so it was not a vital question.

The Master: But, Mr. Chambers, they spent several pages discussing it. They started at page 43 discussing franchises and they proceed to the point where, on page 45, the opinion says:

"The evidence shows that from their creation, down to the consolidation in 1884, these companies" (meaning the predecessor companies) "had been free from legislative regulation on the amount of the rates to be charged for gas. They had been most prosperous and had divided large earnings in the shape of dividends to their stockholders, dividends which are characterized by the Senate Committee, appointed in 1885, to investigate the facts surrounding the consolidation, as enormous. The report of that committee shows that several of the companies had averaged, from their creation, dividends over 16 per cent, and the six companies in the year 1884, paid a dividend upon capital which had been increased by earnings as in the case of the Manhattan and the New York, of 18 per cent, and, had it been upon the money actually paid in, it would have been nearly 25 per cent."

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The Court proceeds to say:

"The committee also said in the same report that these franchises were in force November 10, 1884 * * *.

"Assuming, as the committee did, that the company would be permitted to charge on some prices in the future which in the past had resulted in these 'enormous' or 'excessive' dividends, it need not be a matter of surprise that a franchise by means of which such dividends had been possible was not regarded as over-

47302 valued at the sum stated in 1884. We think that under the above facts the Courts ought to accept the valuation of the franchises fixed and agreed upon under the Act of 1884, as conclusive at that time. The valuation was provided for in the Act, which was followed by the companies, and the agreement regarding it has been always recognized as valid, and the stock has been largely dealt in for more than twenty years past on the basis of the validity of the valuation and of the stock issued by the company. But although the State ought for these reasons to be bound to recognize the value agreed upon in 1884
47303 as part of the property upon which a reasonable return can be demanded, we do not think an increase in that valuation ought to be allowed upon the theory suggested by the Court below."

That is what the Court said.

Mr. Chambers: I know, I have read it and reread it.

The Master: How can I escape that? Why am I not bound to take this value in 1884?

Mr. Chambers: Because there is no proof here of the value.

The Master: But the same value was before the Supreme Court in the earlier case.

47304 Mr. Chambers: I am not urging it now.

Mr. Hayward: I think I know how you would escape that, if the Master please, if you want to hear me on that.

The Master: Yes.

Mr. Hayward: Why, it is a very simple proposition, as I understand it. I have been somewhat confused about some of these old franchises, and I have always to look it up again. When Judge Hough wrote his opinion, upon which this opinion that you have read was predicated somewhat but not entirely, the

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franchise covering the whole territory which this company operates in was a franchise to the Anthracite Gas Light & Heating Company, and as I interpreted the opinion of Judge Hough, who goes into it much more thoroughly than the Supreme Court does, why, they could not get around the fact of the argument of Judge Parker and all these men about the value of these franchises—could not get away from the proposition that there was an existing franchise covering the territory that was sufficient, even though the company fell down and let others operate.

Of course, that franchise expired in 1915, or 1914 —I guess it was 1915, Major Clark says 1913. In 47396
any case the franchise which was in existence, which was binding and which had a value, which made this company more a sort of user of the streets by tolerance at that time, does not exist today. This is the year 1920 and not 1906, and if you will read this opinion of Judge Hough you will find that the franchise on which that is practically all predicated was one expiring in 1915.

The Master: Where is that opinion of Judge Hough?

Mr. Hayward: I have it here.

The Master: It may be in one of the Federal re- 47397
ports.

Mr. Chambers: We challenge the validity of all their franchises. We will hereafter and do now.

Mr. Hayward: There is no question in the Master's mind about that, is there? The one franchise has since expired.

The Master: That is all news to me.

Mr. Chambers: Oh, I thought you were aware that a contest was made and the same proof is here as was offered before.

The Master: Judge Parker never called attention to the fact that the franchise had expired.

47398 Mr. Chambers: Judge Parker spent very much of their time on the question of the expiration of the franchise and, as he says, it was finally whittled down to one, and they apparently got by with that one.

Mr. Hayward: This franchise, the Anthracite Company franchise, was of course good for nine years at the time the other case was tried, and my recollection is it expired in 1913. But, anyhow, it is gone now.

The Master: I will look at it.

Mr. Hayward: Which certainly makes a difference in the value.

The Master: I should say, of course, if some fran-
47399 chises had expired it might make some difference.

Mr. Hayward: Well, I may have said wrongly that it was a franchise. It is not literally the franchise, but it is the right to open the streets, which was the license, and which was the thing they claimed the value on.

The Master: I have never read Judge Hough's opinion; I have confined myself to the United States Supreme Court decision.

Mr. Chambers: One of the questions up before was whether the State was obliged to bring an action to have revoked or have these franchises declared of no value.

47400 Mr. Hayward: And if the Master might be interested to know it, there is a case started, as I recall it, by the City to make this company vacate the streets, on the ground that they were violating the anti-monopoly law or something like that. That case got to the extent of being heard in the Supreme Court in this city, and Mr. Justice McCall when he was on the bench wrote an opinion in which he does not change the facts of this franchise matter at all. He referred to the finding of the Referee in the previous gas case, and says while he is not bound by it, never-

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theless until the Supreme Court of the United States has passed on it he does not care to interfere with the processes in the old gas case.

That case that Judge McCall decided was about 1907 or 1908—1907, while the other case was pending. So that Judge McCall did not decide one way or the other, on account of the fact that the other case was pending; but there is a very clear review by him of these franchises and the dates when they expire, and the subsequent licenses and rights or claimed rights that the company may have. Of course, his summarization of the facts coincides exactly with the others, and just what I have told you this morning about this 1915 franchise expiring. If you want that citation of Judge McCall's I can give you that, too.

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The Master: As long as he did not decide one way or the other, it will not help me, will it?

Mr. Hayward: Only that he does give a clear description of the franchises; but he did not decide anything.

The Master: Let us have the reference to it and I will look it up.

Mr. Clark: 53 Miscellaneous 49.

Mr. Hayward: I feel sure that you will find ample in the reasons for the decision in the other case to decide in this case that the same ruling does not apply at all now.

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The Master: I have always assumed that the franchise situation was the same and that the rule applied by the Supreme Court in the prior case would be binding on me here.

Mr. Ransom: The franchise situation.

Mr. Clark: Is not the same.

Mr. Ransom: This is entirely outside the record.

Mr. Hayward: What is outside the record?

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Mr. Ransom: So that, their assertion that this thing is not a franchise will have to stand purely on their assertion.

Mr. Hayward: What do you mean it is outside the record?

Mr. Ransom: What proof is there of that in the record?

Mr. Clark: The franchises are in the record.

Mr. Chambers: You offered them in evidence.

Mr. Ransom: We offered a great number of franchises.

Mr. Chambers: Certainly.

47405 Mr. Ransom: None of which have expired.

Mr. Hayward: Did you offer the Anthracite franchise? If so, you have not any proof of the franchise.

Mr. Chambers: We expect to raise that question. The franchises are what they are, they are as they are, and neither side can take away from or add to them. You offered them in evidence and they were objected to and exception taken to the ruling. That raises the question of their validity.

Mr. Hayward: The question here in the report of the Hughes Committee, the grant to the Anthracite Gas Lighting and Heating Company, made September 17, 1863—you can call it a franchise or whatever you

47406 want to, they call it a grant—apparently will expire in 1913, and nobody can reach any other conclusion.

I do not know what I am injecting into the record, I have not tried to testify in this case even if Judge Ransom has; but I have a right to point out the authorities. He has not looked at his franchises, that is the answer to it.

Mr. Chambers: I do not remember that you offered any different franchises in evidence than were offered before, did you?

Mr. Ransom: I offered in evidence the franchises of the company—all of them.

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Mr. Chambers: Yes, just a repetition. I was following and I remember what you offered; I knew what our claim would be in regard to them.

Mr. Hayward: 1913 is later than 1906 and earlier than 1920, and that was not changed while I was in France.

Mr. Chambers: I will be through shortly now, in view of the trend of the matter.

The Master: You need not hurry.

Mr. Chambers: I simply want to call your attention to Table 277, being Exhibit AA-426, which is the end of a series of tables leading up to the adjusted book cost less depreciation, of fixed capital including 47408
improvements to real estate, general structures, plants, street mains, services, meters, etc. None of these found in this table AA-426 are depreciated except—

The Master: The first three.

Mr. Chambers: I beg your pardon?

The Master: The first three, I think.

Mr. Chambers: There are four in the middle here—plants, street mains, services and meters. Just those are depreciated, but none of the others are.

The Master: I remember that table very well.

Mr. Chambers: Substantially all of the figures in that table came from the books of the company and nothing of any substantial importance, as I remember 47409
it, except as to the age, relates in any way to the Senate Document 47. So that practically that entire table is removed from any criticism that it is founded on the book cost prior to the consolidation. There were some few items which might come under that category, but of no importance.

Then I called your attention to Exhibit AA-466, which is our rate-base table founded on cost covering the whole year, which gives you a figure for the separate items each year. It is true we took land from

47410 the Senate Document 47. That we admit. It shows the cost of the land to the companies that were consolidated by the consolidation, and it is ultraconservative, if anything. In many instances the figures are larger than would be shown by actual cost, and that was occasioned by the fact that it was impossible to identify parts of property.

Then we tried in this case to show you, by a table which you would not take, what the value of the land was for each year, 1906 to 1918, as we claim was used and useful, as shown by the opinion of the deputy tax commissioners. We did that having in mind that
47411 if you disagreed with us on this question of land value, of cost as found by his book cost, or cost to the company, that then perhaps you might want to substitute in its place, for that line 1 on Table 295 of Exhibit AA-406, the value of the various pieces of property as given by the deputy tax commissioners.

The Master: Those values are in the record, too.

Mr. Chambers: Right, but we had them in the table for your convenience.

The Master: You can show me the table, I will look at it.

Mr. Chambers: So if you disagree with us as to
47412 that line on land, then perhaps you would want to substitute the only testimony in the case on land that runs right straight through, being the opinion of the deputy tax commissioners.

The Master: You said you were going to submit those tables to me, did you not?

Mr. Chambers: I will submit that one.

The Master: I will take them without their being in evidence.

Mr. Chambers: Then we come to another table of Mr. Hine, Table 277 of Exhibit AA-426, which we say is correct and right, and that finds its source in the preceding tables which are all in evidence.

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Then we have the third line in the rate-base table, which shows the line of working capital. Of course, working capital is really a question of law, as to how much shall be allowed for working capital; but it seems to me that our testimony on working capital is fair and reasonable, particularly so in view of the fact that the company has substantially $400,000 which it may use and which it is using as a result of the prior suit.

The Master: Isn't that a liability?

Mr. Chambers: Nobody has called for it.

The Master: It is a liability, isn't it?

Mr. Chambers: Possibly. So are bonds. My attention is called to the fact, so are bonds a liability, 47414
but they do not go into working capital. Mr. Carter testified, and it is in this record, that a million dollars was sufficient working capital for this company back in 1906. Now, in fairness to him he will say that he meant cash when he spoke of a million dollars. I am going to represent him as he would like to be represented on this occasion. He did say under oath in the prior suit that a million dollars was sufficient working capital.

Mr. Ransom: Cash.

Mr. Chambers: He did not use the word "cash," as I remember it. I looked it up and he did not use the
word "cash." But he explains that away by the fact 47415
that he had in mind a million dollars in cash. He explains that away. But regardless of that, I think when he said a million dollars, that was about a correct amount for a company of this kind.

This company does not need such a large working capital for itself. The Court will have to disregard what this company does do for others, that would not be fair to take into consideration in dealing with the consumers of this company. The income of this company is regular, there is no uncertainty or no great

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uncertainty about the fact that the consumers will have to pay for their gas pretty promptly or it will be shut off.

And then there are the prepaid meters and so on, and their materials and supplies are all mixed up with these other companies. But you have to deal with this company, so far as working capital is concerned, alone, and disregard the other companies. Mr. Maltbie's figure for working capital, it seems to us, is conservative, if anything.

The Master: How much was that?

Mr. Chambers: A million for 1918—$1,300,000.

47417 He explained to you that he allowed half a million and $500,000—$550,000, wasn't it?

The Master: There is a table shows how he makes it up.

Mr. Chambers: Yes, in cash.

The Master: There is a table in there shows how he makes it up.

Mr. Chambers: Yes, his table of working capital.

The Master: As against Mr. Carter's claim of $462,500.

Mr. Chambers: His Table 290 will be found at page 14319.

To show how fair we were in our rate-base table

47418 we put in on line 4 an item of $200,000—it is $180,000 in 1918, but it was $200,000 in 1906—for construction capital. Nobody had said anything about that until we came forward with the figure, and we thought the company should have that. We say now they should have it, although no mention was made of it by the other side. So there is an item of $180,000 that we are willing to allow in the rate base, as I say showing that we have tried to be fair in making up the rate base.

The question of engineering and administration we

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have no figure upon, because Mr. Maltbie said he searched in vain for anything that would show a figure for engineering and administration, outside of engineering and administration which is included in the other figures of fixed capital and so forth.

Item 6, or line 6, "Organization"—he said he searched also in vain for any figure that would show an amount for that, and he found none.

Interest and taxes, that is in the same category. Franchises we have spoken about. There is nothing on the books from which anybody could ascertain what was the actual cost of franchises.

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Going Value: None is claimed by the other side. And the question of the General Office Building and the 57th Street property we have left open, so if you want to put it in the rate base you are at liberty to do so; if you want to leave it out of the rate base you can leave it out. It is there, it is in the rate base table.

Counsel expressed considerable surprise that we would not take a position one way or another as to whether the General Office property and the 57th Street property should be in the rate base. I do not see any reason why any criticism should be made of that, because we do not know which way the Court would view it, whether it should be in or whether it should be out. But if it should be in, there is the land and there are the buildings of both pieces of property. I think myself the 57th Street office building should be treated in the manner in which I wanted to show you yesterday, but you said you did not care to hear me because your mind was already made up. I am referring now to the testimony of Senator Boylan on that phase of the case. We will be glad to furnish you with all of our tables leading up to and finding their way into the rate base table.

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47422 There is one thing I would like to have you bear in mind when you consider it, and that is an average rate for the year, the amount being given for each year from 1906 to 1918, inclusive.

Whatever I have said yesterday and today concerning 1918 applies equally as well to 1919. We tried to show you in the last few days of the trial, you will remember, that many many of the expenditures which have been included in Teele's figures for 1919 not only were not justified, but that there was no proof of any kind that the expenditures related to the gas-making business.

47423 You will find in the record, starting about page 13950, page after page of testimony where we attempted to show you that voucher after voucher for expenditures made in 1919 had nothing whatsoever to do with the gas making business. I refer to the vouchers of Decker, Beardsley Hemmens & Taylor, Schieberling, Shearman & Sterling, Whitman, Ottinger & Ransom, the expenditures made under miscellaneous general expense, like defensive emergency service, fees paid to persons for attending meetings of Board of Directors, fees paid to various societies like the Merchants Association of New York, $550, amounts paid for N. G. A. Banquet and Convention,
47424 office rent of Shearman & Sterling, the amount paid to Livingston for newspaper advertising.

Mr. Hayward: For Judge Ransom's opening statement, that he never made.

Mr. Chambers: Something like that. I tried to say something about this, but the Master would not permit me to say anything except to offer the voucher in evidence, and he would not permit me to state on the record what the voucher showed or did not show. He just pinned me down to the mere statement of the offer.

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The Master: If you have the voucher here let me look at it.

Mr. Chambers: I think we ought to have them up here.

The Master: I will have them when I take the case under consideration.

Mr. Chambers: We offered a good many of these, just for the purpose of showing that the vouchers did not show on their face what they were for; and of course Mr. Teele did not know.

The Master: Except as they were charged to certain accounts.

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Mr. Chambers: For instance, I asked Mr. Mylott: "Q. Have you ascertained the total amount paid to R. E. Livingston under the heading Publicity Expense, Newspaper Advertising and Gas Logic in the first six months of 1919? Mr. Ransom: I object to that as incompetent."

He would not think of that—would not let us show what that was for when we analyzed the account.

"The Master: Objection sustained.

"Mr. Chambers: Exception.

"Q. Will you give the amount?"

Then the same ruling and exception, and so on. That continued from the page I gave a moment ago—

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The Master: You know what the amount is, do you not?

Mr. Chambers: Pages 13950 to 13978.

The Master: No, what is the amount before you?

Mr. Chambers: I wanted to show—

The Master: But it is in the record: all you have got to do is to call my attention to the amount.

Mr. Chambers: You missed the point there, and I thought you did then. I made an explanation. The point is this: Taking one of those accounts that I was referring to here a minute ago, that was the ac-

47428 count of emergency expenditures or expenditures for defensive emergency service—I think that is the one, although there are a number of others—I was trying to show by Mr. Mylott that they had disguised or put the expenses for law or emergency service in other accounts, and it was hidden away and you could not find it unless you let Mr. Mylott testify to it.

The Master: No, but you can show me where those items are in the books.

Mr. Chambers: I cannot now without the proof. You may want to throw out defensive emergency service, for illustration.

47429 The Master: Yes.

Mr. Chambers: In other accounts is a whole lot of money spent for that very same thing, but it is not under the one account.

The Master: But you have proved all of that. You tried to prove totals.

Mr. Chambers: No, it only took the analysis to show it. You have closed the door and I cannot tell you now how much Mr. Mylott found in that other account or in some other account that should be charged to the one that he is speaking of.

The Master: If you do not want to call my attention to the items I cannot make you.

47430 Mr. Chambers: There is no evidence of the amount.

The Master: They are in the books, and the books are in evidence.

Mr. Ransom: The vouchers also.

The Master: The vouchers are in evidence.

Mr. Chambers: But it does not show; it will take an examination.

Mr. Ransom: Every voucher that had any item in it even down to an item of 7 cents for laundering a sheet, was put in evidence while Mr. Mylott was on the stand.

Mr. O'Brien: Laundering what?

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Mr. Ransom: Laundering a sheet for a representative of the City.

Mr. Chambers: What I said about Woods' hypothetical proposition of gas making in Exhibit 353 for identification, and what I said about Teele's Exhibit 205 and his other exhibits, applies for 1919, as well as 1918, the only difference being that instead of 205, Teele's exhibit to August 31, 1919, is 355.

I did want to speak about the question of property which we claim is not used and useful, but I imagine that your mind is made up and you do not care to hear anything. Mr. Hine testified that certain pieces of property in certain plants, particularly the 14th and 47432
42nd Street plants, were not necessary or useful in the conduct of the complainant's business, and if anybody will simply take a look at one of these tables—I will see if I can find it here—I think they would be convinced right off without any further proof that the 14th and 42nd Street plants are not useful and ought not to be carried as a part of the capital of the company, and should have been scrapped as far back as 1906, at the time when Carter testified that it was the intention of the company to make all their gas over in Astoria.

I refer now so far as the 42nd Street and the 14th Street plants are concerned to the company's own ad- 47433
mission as to the amount of gas manufactured in these plants during these various years, as reported to the Public Service Commission, the exhibits being AA-132, AA-133 and AA-138, and there may be some others. Those show that during all these years these two old worn out plants have not been able to produce sufficient gas to warrant anybody with any horse sense in carrying them. Why, the gas that has been made at those plants is infinitesimal compared with all the gas that is made. And keep in mind that the Astoria plant Woods said has not been running to capacity and

47434 was not running to capacity. All they had to do was to run the Astoria plant to capacity and then there would not be any reason in the world for carrying these two white elephants.

The Master: How much of the capital investment is represented by those two plants.

Mr. Clark: $6,000,000.

The Master: $6,000,000?

Mr. Clark: Their claim is a little over $6,000,000.

Mr. Chambers: I do not remember myself now. It is true, and I have heard counsel on the other side say it a number of times, that something terrible would
47435 have happened this winter if they had not brought out these two old racers and squirted a little ginger of some kind into them and trotted them around the track this winter. But you want to have in mind that the case is on trial and it would be very important to show you that they made some gas at these two old plants, you know, and that they have still got enough life in them to run around the track at least once. I can imagine these poor old plants, if they were horses you know, chasing around the track with their ribs showing and their hip joints sticking out like Artemus Ward's horse that had so many points, so many good points, that you could hang hats on them.

47436 But it seems to me that the Consolidated Gas Company devoted so much time to brushing up and polishing up and shining up these two old plants so that they could run their last heat, perhaps, that they lost sight of the fact they were required to make gas of 22 candle power. They fell down on that, but they thought perhaps they should devote so much of their time to this, and they lost sight of the important proposition that the consumers were to have candle power at 22.

Then Mr. Hine called attention to some other pieces of property which he said were not used and useful. For instance, Block 1457, Lot 6, Parcel 2; Block 1157,

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Lot 1, the easterly 300 feet; Block 1682, Lots 8 and 11; Block 1704, 225 feet of that; Block 2583, Lot 260; Block 3236, Lot 1, which is the Kingsbridge holder, the north 450 feet of that part of the lot which is between the holders—the easterly part of the lot which is between the holders and the street.

Simply because the company is carrying the property, and simply because Mr. Alrich saw fit to color it in pink on his exhibit 178, is not any reason why you should compel these consumers to carry a lawn tennis court up there on the Kingsbridge holder property. Simply because they say it ought to go into the rate base is not any reason for doing it, and if you 47438
take away any of that property, away goes the taxes and all relating to it, and the expense of carrying it. You remember that Mr. Alrich was so eager to pull it in and include every piece of property in his Exhibit 178 that he pulled in and included some property of the City in his eagerness not to leave out anything. Why, Alrich not only put in property owned by the City in Exhibit 178, but, as I have just said, he included property that did not belong to the Consolidated Gas Company at all. That is a fact.

I say the weight of the testimony is that the old worn out white elephants, the 14th and 42nd Street coal gas plants, are of no use, and should be excluded 47439
from the entire period, and that these other pieces of property which I have mentioned should be excluded as used and useful during the times that Mr. Hine included in his testimony.

I think that is all I care to say except to call your attention once more to the fact that we claim that this company has enjoyed a return, under the statute that they seek to condemn of over 6 per cent, or substantially $29,000,000.

The Master: Is that all?

Mr. Hayward: Before Mr. O'Brien starts, for the

47440 enlightment of Judge Ransom, who said I was injecting something into the records here, I find in the list of exhibits, his exhibits, almost the first thing in this case, Exhibit 57, the certificate of incorporation of the Anthracite Gas Lighting & Heating Company. That is the one I was talking to you about, dated in May, 1863, printed in the record of the prior suit at page 410.

Of course, he just took the old record to save time and work, and put in whatever the counsel for this company put in in the other case. He evidently did not read those exhibits, because Exhibit 58 is the res-
47441 olution of the Common Council of the City of New York, adopted June 18th, 1863, and by the Board of Aldermen of the City of New York on June 22nd, 1863, granting this 50-year grant to the Anthracite Gas Lighting & Heating Company of New York, the right to lay pipes in the public streets.

Now, that may not be a franchise. That is what I am talking about and I think the Master knows that. What I was confused about was whether it was 1913 that expired, or 1915. I have not the thing before me, but in the list here there is also a further resolution passed by the Board of Councilmen in May, 1865, and the Board of Aldermen on May 24th, 1865, relat-
47442 ing to the same subject. As I recall it, they were simply confirmatory of the prior enactments and did not extend the time two years. Fifty years from 1865 would of course be 1915, but that accounted for me being mixed up on the years.

Mr. O'Brien: May it please the Court, I do not expect to take a whole lot of time in covering the ground that I deem necessary to be covered by me at this time, under the conditions we find ourselves in here at the close of this case. It has been a long case, we have gone over considerable testimony, we have been through the generator house, and the retort house, and

the purifiers, and we have been scrubbed in the scrubbing house, and we are out now with the spent material. That is about like the defendants feel, they feel like the spent material basking in the sunshine. Hope springs eternal in the human breast, and there is a hope that some day this whole thing will be righted. I regret, if I may give this final word a personal touch, that the case has not been presented with adequate proof. I say that because as a public official I represent, with attorneys representing the other defendants, the public, with a public duty to have justice done. We cannot but feel a deep sense of regret that there is a sparse record going to the court in this case, fifteen volumes, with over fifteen thousand pages of testimony, and none of the vitals necessary for a rate case found in them. I regret that with all the money that is being spent by the company, money that in itself would perhaps reduce the price of gas four or five cents at least for a given year, with all the effort that has been made, time consumed and money spent in behalf of the defendants, that we have here something that must be tried over again. That is my prophecy in regard to this case. Just as sure as we are sitting here this case will be retried, and testimony will then be presented in a proper way; and the regret on our part is all the greater for the reason that it could have been adequately tried, proper and sufficient evidence could have been submitted to meet at least the requirements of a case, and could have been presented in far less time than we have occupied.

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There was a picture drawn by the complainant in the testimony brought out by Mr. Brundage as to the number of books of account that were kept, the number of reports, the number of cards; there was a picture drawn of a procession of vans going down to the Federal Court bringing down this voluminous testimony, and the dream was painted of the time that

47446 would be consumed, that we would leave here with the whiskers of Rip Van Winkle when the case should have been terminated. Now, there wasn't anything to that. I say we could have gone ahead and have tried this case and have put in evidence, brought out the truth, whatever the truth may be, and that is all the defendants want, and that is all they ever need to want as public officials, that is the truth and nothing more, and willingness to abide by what it might show, and this case could have been ended at least three months ago.

The accounts of the commercial office should have
47447 been proven. It would not be necessary to bring the Washington Heights man down, or the whole 57th Street office, and keep them here the whole length of time; it would not have been necessary to have brought out all the detail of these offices, but we could have put in enough in the record to show whether or not these accounts could be relied upon, whether the underlying data was fictitious, and whether there were chances of mistake. We could at least have determined the degree of reliability of these records.

The same could have been done with the manufacturing records, we could have had De Castro here, and Ritchie, and Sperling, and Lawrence, and the men
47448 who run the Astoria plant. We could have had the original records, could have applied certain tests, and it would not have gone on interminably, and the attempt to reduce the proposition of having the right kind of proof required in a rate case, the attempt to make it appear ridiculous was all done to cloud the issue. Don't you believe, your Honor, that if you took the manufacturing book, say for the 99th Street station, if you took the manufacturing record of the 21st Street station and put on the stand the men who had been with these books for a term of years and knew from A to Z the records there, who knew how

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many tons or pounds of coal it took from day to day, knew how reliable these records were, don't you think that could have been done promptly and without waste of time, and they could have laid the proper foundations, the foundations that lead to complete confidence in the result. That is entirely lacking. Men like De Castro, who have been with the company a number of years, could have been brought down here, the daily records, the weekly reports of manufacture, the men who put them into the manufacturing books could have been brought in here and questioned as to the results from year to year, and then you would have something to start with. We could have had records of that 47450
kind, of a permanent character, that are supposed to speak facts, the entries in which are supposed to have been made currently with the deeds done; and having that, and passing it all over and bringing Mr. Woods here on the most ridiculous proposition I ever heard of in a rate case, the attempt to justify figures by setting up a hypothetical figure and saying—at least it is tacitly said, "Our figures in the works are less than Mr. Woods' hypothetical figures, and his hypothetical figures being about right, so far as opinion testimony goes, the conclusion must follow that we have run these works in an economic and efficient way." That will never do, that will never meet the requirements of a 47451
rate case. It carries with it absolutely the conclusion that they did not dare to go into the actual results. There is nothing in this case except the hypothetical figures of Mr. Woods and the figures made up by Mr. Teele out of tabulations from the books. I say the same thing is true as to other things besides the manufacturing results and the commercial office. There have been thousands of dollars spent here, and it has not been shown why it was spent and how it was spent. There have been purchases made, there has been contract work entered into, there has been money

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running into the thousands spent, and unless you assume that the defendants, having had the opportunity to look at the books, to go in the office there and trudge along that rocky road they had in the upper chamber, 16 by 14, with an opportunity to ask Mr. Davison, and to wait until he got ready to bring some underlying data, unless you say that that takes the place of our right to have these witnesses here and cross-examine them, unless you say that it is up to us to go and find fault in the books, to point out flaws, unless you say it is up to us to find the flaws in these contracts, to show that they were not justified,
47453 then you have got to hold that they have not proven their case. Notice how ingeniously and artfully, for the time being, temporarily successful, the presentation of their testimony was. There isn't any man in this case who has held up his right hand and sworn to those payments. Assuming that there was a conspiracy in this case—and this will give you the acid test of the reliability of my logic, you can't find in this case, if there was a conspiracy to fool the Court, to cloud the issue, to present a fictitious case, to cover up wrong deeds done and foolish or wasteful expenditure of money, if you can conceive of such a thing having taken place and you wanted to get somebody for per-
47454 jury in order to punish them criminally, there isn't anybody you could get hold of. Why? Because there is nobody brought in here who swore to facts. You could not hold Mr. Carter, he has not sworn to anything. You could not hold Mr. Addicks on his testimony. You could not hold Mr. Brundage, because all he did was to say, "These are the books they used, they are kept in this way." He didn't know anything about the payments. In fact, when he was first on the stand we asked him about fifty different people that this company was doing business with, and he didn't know of them, and the Master himself said

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that Mr. Brundage did not know these things, that all he knew about was the books. You could not hold Teele, because they turned over the books to him. He doesn't know whose these companies were that got the money, whether the contracts were let on competitive bidding, whether there was a lot of overhead included in the prices. You could not hold Woods for perjury, because all he did was to put in a hypothetical statement here. Woods did not say that they used so much coal at 99th Street; he did not say that at Astoria they began the year with so many pounds or tons of coal on hand, that they ended the year with so many left, and that they purchased during the year 47456
a certain amount of coal. Then who has sworn to this? You could not punish the books for perjury. I mention this to show your Honor that you do not get close to the facts in the case through the witnesses who have been presented. They very artfully present one man after the other, like Mr. Gawtry, who testified as to buying supplies; and when you boil the whole thing down all you have is a hypothetical statement from Mr. Woods and tabulations made from the books by Mr. Teele. That is about all you have in this case, and it does not need the requirements of a date case.

Now, this action must fail, as I have said, for the reason that they have not borne the burden of proof. 47457
The words laid down in the rules of the courts in regard to rate cases mean something. They do not mean that you can pass the buck to the defendants and make them prove the case, and that is what we have been required to do from the very beginning. The effect of your Honor's rulings all the way through has been practically to make us take the offensive, to make us take the affirmative of the proof. I believe myself that you came into this case with a haunting idea of the high cost of everything, and that has prevailed in many circles in the city, a great many men that you

47458 and I know, men that you meet here and there, have the idea which just shuts out all other ideas, that things have gone up anyway; and the way some men's theory works in regard to gas companies and public utilities is this, that unless you conceive that before the war, before this period of abnormality came along there was a tremendous profit, you have got to assume that all the profit has been used up by the rise in prices. It is a bias, really, a prejudice entertained unwittingly. You and I as we have talked with these men have been compelled to throw off the veil and get down to brass tacks, and find that it does not exist, and it does
47459 not exist with this case. Here is a tremendous powerful corporation, a successful corporation which is rolling in money. The way dividends have come in and surplus has been rolled up is tremendous. Look at the dividends that have been paid. Take the Astoria plant—can you conceive of anything like the moneys that they have had there in 1918, after paying dividends on a stock issue of $10,000,000, after paying interest on the bonds, with a surplus rolled up of $684,000, and this after paying rentals of $500,000 that are not justified, and this without any examination into the purchases that were made to determine whether or not they were reasonable. Now, we have got to pull
47460 off the cover from that, you have got to get into that surplus and find how much of it was earnings, how much of it was set aside to take care of depreciation, you have got to find out just about how much of profit there was to Astoria before you can determine how much of a price ought to be allowed to the Consolidated Gas Company for the gas that they furnished from Astoria.

The Master: I intend to.

Mr. O'Brien: That leads me to another thought, and I will perhaps say it right here. My remarks will be rather disjected because of the hurry that I am in in trying to close up my part of this finale.

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I make the prophecy that this will be one of the reasons that the Court will send back this report, that this case may not be tried without taking in all of the properties and the things involved, and determining the business by having the whole system before the Court. It is a company matter, it is a system matter from end to end. Astoria must be included, the New Amsterdam must be included, the Mutual must come in, and every one of these gas companies has got to be involved, and you cannot separate the cases and try them in independent rate cases without having the system in.

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The Court I assume will take judicial notice of the fact that the East River Gas Company, the New Amsterdam Company, the New York Mutual, and the Standard, have begun rate cases, and are attacking the rates, and that you will have to have before you in passing upon this question as to whether or not you can adequately and fairly and justly try out this rate case, without having all the companies in to determine how much the investment is, to determine what the expense is. You have to do that for many reasons, one of them being so you will know just what profit there was. How do you know but that it took only 30 cents to produce gas in the Mutual or the Standard or the New Amsterdam? There is no proof before the Court as to how much it cost them. When it comes to intercompany relations, when it comes to agency agreements, the complainant in this case will have to go away beyond what they have shown in their proof, they have got to bring in the books and show the operating expenses of these companies, and they have got to prove the detail of the overhead of these companies before you can allow them one cent for the gas that has been furnished by them to the parent company. The relations have all got to be weighed up, just as acts entered into relations that

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47464 exist between a man and himself, and there is a severe burden put upon any company or any individual under circumstances of that kind to explain the details, and to eliminate the suspicion that there has been something done to favor the companies that entered into it.

Now, getting back again to the burden of proof in this case, I have said that I believe that your Honor has been weighed down by the idea that everything went up. The expressions you have used during the case would indicate that, that prices were going up, that they had reached a level where they would not
47465 recede, that gas oil was increasing in price. You will recall that you went so far as to say, when I began to show the community of interests between the Standard Oil Company of New Jersey and the Consolidated Gas Company, you went so far as to say that you didn't care if they were both owned by the same person or the same people, it would still be up to the defendants to show where you could get gas oil cheaper. Now, that is not a correct statement of the law. If Mr. Rockefeller was a dominating influence in the Standard Oil Company of New Jersey, if he had such an interest there as to shape their affairs, and he was a dominating factor in the complainant com-
47466 pany, and he was present at the meetings where these contracts were made as to gas oil, then they have got to come in here, he has got to be produced here and testify as to just how those contracts were entered into, and he has got to be able to show that the interest of the complainant did not suffer by reason of his being connected with the Standard Oil Company of New Jersey.

The Master: I do not want to interrupt you any more than I can help, but let me get this clear: Supposing that the Consolidated Gas Company did own a controlling interest in the Standard Oil Company of

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New Jersey, and suppose that the Consolidated Gas Company, owning the Standard Oil Company of New Jersey, sold to itself gas oil at six cents, which was as cheap as anybody could get it for anywhere else, would you say there was any criticism about that?

Mr. O'Brien: Yes.

The Master: What criticism?

Mr. O'Brien: The Gulf Refining Company and the Texas Oil Company—this may or may not be in the proof—I think you will find enough in the proof to justify the statement I am going to make—none of those companies are going to enter into competition for gas oil business with the Standard Oil Company 47468
in New York City. The Standard Oil Company of New Jersey dominates this situation. I say to your Honor that if you have a situation where it is in the palm of the hand of a corporation to raise or lower the price of gas at will, practically where they want to, to make a law confiscatory—and this is the situation here—it is in the power of this company, raising the price of gas almost, so far as appearances go, unappreciably, to put the statute out of business. You have got to have the proofs before you—

The Master: But this is the point: Isn't it always the question, irrespective of inter-company relations, as to what is the reasonable price for gas oil? 47469

Mr. O'Brien: Very true, but if you find that this company has practically a monopoly here, if you find that they control the situation, then I say by reason of the fact that Rockefeller is a member of the Executive Committee which made these contracts, and was a dominant factor in the Standard Oil Company of New Jersey, it is up to Rockefeller to come in here and put in the proof, and show you just how much they charged the Standard Oil Company of New York for the gas oil they sent them, how much they sold the same gas oil for to be exported, for how much they

47470 sold it to other people, to show you that the whole thing has been perfectly honest and fair to the Consolidated Gas Company.

The Master: But whatever your theory as to the method of proof is, or whatever their theory, meaning the Consolidated Gas Company's theory, the ultimate fact that I have got to find is, what was the reasonable price for gas oil in 1918 and 1919, and will be in the future, as near as I can determine. Isn't that the fact that I have got to determine? Answer that, isn't that the fact that I have got to determine?

Mr. O'Brien: You have got to find out where there
47471 was an inter-company relation between these men.

The Master: But whether there was or was not, is not the ultimate fact I have got to determine the fair price of gas oil?

Mr. O'Brien: Well, I will have to answer that in a qualified way, by saying this: Passing over for the moment whether or not it is in the proof, you are assuming that the price charged by the Standard Oil Company of New Jersey is just as low or lower than any other company would charge.

The Master: I am not assuming anything, I am trying to bring out—

Mr. O'Brien: There is a burden that rests upon the
47472 complainant, under conditions of that kind, where the Standard Oil might be charging just as low or lower—

The Master: No, listen to me. You start off with the proposition that the Consolidated Gas Company has the burden of proving the reasonable price paid for the materials that go into the manufacture of gas, one of those elements being gas oil. The burden of proof is on them to show that they did not pay more than a reasonable price for gas oil. What I am trying to bring out is this: Assuming that the Consolidated Gas Company owned all the stock of the Standard Oil Company of New Jersey, would the Con-

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solidated Gas Company be required to furnish oil for the purpose of making its gas at less than a price than it could be sold for anywhere else?

Mr. O'Brien: I think that under the circumstances shown in this case it would be up to the complainant here to show that the price that they have paid to the Standard Oil of New Jersey is a fair price.

The Master: You don't answer my question. I am assuming all that you can possibly contend for, and more than you do contend for, namely, that the Consolidated Gas Company owns all of the stock of the Standard Oil Company of New Jersey. Let us assume that the Standard Oil Company of New Jersey, 47474
or the Consolidated Gas Company, whichever way you look at it, can sell gas oil to Jones, Smith or Robinson or the X Y Z Company, for 6 1 4 cents, that is what they can get for it. Would they be required to charge this company only 6 cents because they owned all the stock of the company?

Mr. O'Brien: Of course they are not going to be required to sell it at a loss because Mr. Rockefeller is in the company. They are certainly entitled to a fair price, even though Mr. Rockefeller belongs to their company.

The Master: I will assume that there is a profit in it at six cents as well as six and a quarter cents, and 47475
that they are making more profit at six and a quarter by selling it somewhere else.

Mr. O'Brien: My answer to that is that they have got to come in and satisfy you and this Court—

The Master: Of what?

Mr. O'Brien: They have got to satisfy you that they are getting nothing but a fair profit.

The Master: In other words, you are drawing a distinction between a fair profit and a fair market price, or the market price.

Mr. O'Brien: Well, you may assume that there is

47476 not a market. I think you have assumed that already.

The Master: Am I to understand your contention is that if they were in a position to get oil from the Standard Oil Company at less than the Standard Oil Company could sell it for to some'' lse, that they should have gotten it for less than anybody else?

Mr. O'Brien: I didn't catch that. I say to you that if they are going to do business with a company that is dominated by some of their own members, some of their own Executive Committee—and the same thing will apply to cast iron pipe because of the relationship
47477 of Mr. Brady to both companies—they have got to come in here and satisfy your Honor that the consumers have not suffered anything by reason of the relations of these men to the two companies, by reason of the comity of interests.

The Master: I will follow you as far as that.

Mr. O'Brien: And where that relation exists the situation is not satisfied by saying that the price that was paid to the Standard Oil Company of New Jersey was only as much as they would have had to pay to some other company, some independent company. That will not meet the situation, according to my contention. Not only that, but one of the things that is
47478 wanting here is testimony as to how much the Standard Oil Company of New Jersey charged the Standard Oil Company of New York. The Standard Oil Company of New York buys all its gas oil from the Standard Oil Company of New Jersey. The Standard Oil Company of New Jersey had no other customer except the Consolidated Gas Company, according to the record in this case. The Standard Oil Company of New Jersey sells nobody else, and therefore we have not had a chance to compare the prices that the Standard Oil Company of New Jersey is charging to somebody else with the price paid by the Consolidated Gas Company.

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What I say as to the situation, the obligation that arises here, might be illustrated, although, it is not entirely analagous, it might be illustrated by the situation that is presented. We know how jealously, and how keenly the Court looks into the relation between a trustee and the beneficiaries for whom he is trustee, a lawyer and his client. Your client wants to sell a piece of property. You take it because it will benefit you, you can use it, you may have given him a little better price than the client could go out and get for it, but when the Court looks into the transaction between the trustee and his beneficiaries, between a lawyer and his client, between any other persons between 47480
whom there is a confidential relation, the situation is altogether different than the ordinary transaction between one man and another. That is what we have got in this case, and the obligation on the complainant is increased, the burden is increased, of clarifying this whole situation by reason of the prices paid by other big companies under their contracts for oil. The 3-cent contracts run down into 1918, and therefore you have got to assume as the price for gas oil that the complainant got, 3 cents, for such part of 1919, as may have been covered by the contracts between the Gulf Refining Company, and the U. G. I., the Public Service Corporation of New Jersey and the Bos- 47481
ton Consolidated Company, and 5 cents for the rest of that year.

The Master: On what basis?

Mr. O'Brien: On the basis that these companies were able to get that. Of course there were variations as to transportation charges chargeable to these companies by reason of their locations. That will have to be taken into consideration. I say this particularly because there is a close relationship between the Standard Oil Company of New Jersey and the Consolidated Gas Company, and you have got to assume in this

47482 case that if these three big companies operating around the territory of New York could secure gas oil at 3 cents per gallon from the Gulf Refining Company or some other company, that this company should have gotten gas oil just as cheaply.

The Master: How about 1920? What price do you say I should find?

Mr. O'Brien: So far as this part of the year of 1920 is concerned, you have got to assume of course the period that is customarily taken by gas companies in advance in making their contracts. In other words, as to the present time it must be measured in terms of
47483 six months ago.

The Master: I have got to make a finding, I take it, as to what the record justifies me in believing will be the price of oil for the next few years.

Mr. O'Brien: No, I don't think you are compelled to go into that at all, for this reason, first, because the case has not been presented to you on that ground. In fact, you will have to throw out 1919, because you have not got a complete year. You have got to have a whole year in.

The Master: What do you claim with reference to the proof as to the trend of oil prices?

Mr. O'Brien: I do not think you can make a find-
47484 ing under any consideration as to the future. I do not think the Court is going to accept any guess as to the future.

The Master: Is there anything in the record on which any finding can be based?

Mr. O'Brien: No, there is not. You remember the day Mr. Gawtry was on the stand. He is a lovable man, and I can see where he will be quite at home in the savings bank, the quiet, placid, Palm Beach atmosphere of the Bank of Savings, with not a chirp of a bird to break the silence, and where they handle the mortgages at 4 1/2 per cent, there isn't going to

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be anything to bother poor little Gawtry's brain, and nothing to ruffle his tranquility in that place. It was just like having him read a poem—perfectly ridiculous testimony. I could have brought in Bernard Baruch's report to the National Government, which was heralded here a month ago all over the country as to what he thought about prices going down. We could have brought in Professor Irving Fisher of Yale, and could have had him tell you that the whole situation is not profiteering, is not the high price of things, not the lack of production, but it is all a financial matter, it is a matter of regulating the gold and coin, and so on. We could bring in all kinds of men 47486
to give you views on the future, but that is not evidence, and I do not know any case where the Court is going to take views as to the future. You are dealing with concrete facts in this case, and so I say, if you ask me about the price of oil as of the present time, you have got to carry your mind back six months, or back to the period at the time when the gas companies made their contracts when they were without oil, for the year 1920. I do not know whether it is in this case, but even that poor orphan company, down at Coney Island, presided over by that sweet little lady, Mary Dillon, was able to buy oil at 5 1/2 cents, 5 and a fraction, I may be a little mistaken, 47487
up to July 31st, if Thompson, and Bassett, and Mary Dillon could get a contract at 5 and a fraction cents up to July 31, 1920, what are you going to expect from master minds like Carter and Addicks?

The Master: What will they have to pay in 1920?

Mr. Ransom: Mary will have to pay about 15 cents.

The Master: What will they pay after July 31, 1920?

Mr. O'Brien: I am not quite sure as to the exact price of the three big companies, but they are 5-cent contracts, the U. G. I., the Public Service Corporation of New Jersey, and the Boston Consolidated.

47488 The Master: What is the Consolidated Gas Company paying for 1919?

Mr. O'Brien: 6 cents plus.

The Master: For 1919, what did Mr. Little say? At least 6 cents, wasn't it?

Mr. O'Brien: Little took an arbitrary figure there.

Mr. Ransom: 7 cents to 10 cents.

Mr. O'Brien: In his estimate he took an arbitrary figure of 6 cents without going into the question of the proofs in the case.

The Master: That was his judgment then, that 6 cents was a fair price.

47489 Mr. O'Brien: No, it was not his judgment. That was made perfectly clear, he just assumed a price, he might have put in the Chicago price of 3 cents and a fraction, he might have put in the contracts which were being made when he was preparing his testimony.

The Master: I think Mr. Little realized that he was a witness for the defendants, and he tried to be fair in everything, and I was much impressed with what he said.

Mr. O'Brien: Like his statement as to the pounds of coal to be used, he used an outside figure which would not interfere with the calculation he was otherwise making in his estimate, so in regard to the price

47490 of oil to be paid on his estimate at the time it was being prepared the proofs were being submitted as to the prices, and as to that of course it was purely arbitrary as being under 6 cents, leaving the court to determine from the facts in the case what was the proper price to be paid, and he said you could raise or lower it according as the proofs in the case indicate that it should be below 5 cents or more than 5 cents.

The Master: But a man like Little is not using a figure that he does not think is right.

Mr. O'Brien: We will have to stand on his testimony in regard to that. There was some reference

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made to the figure elicited by Mr. Ransom, and with all due respect I was about to say the Master also, when the witness was on the operating table. There is some reference to his spot oil at 10 cents.

Mr. Ransom: Contract oil eight cents.

Mr. O'Brien: There is nothing in that kind of testimony, because it might have any old thing, with a twist in the market, when you could buy spot oil. It means nothing more than spot oil.

Now, your Honor, to get back to my statement, I am not going to take up time going into the question of the error, the reversible error of assuming the books without the underlying statements.

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The Master: We get nowhere with that.

Mr. O'Brien: I will say in closing on that, that a fair illustration of what might have developed had we had sufficient time with these heads of the works and the men under them, is shown by the 99th Street Manufacturing Book which was brought in here, mutilated, changed, altered, and the alterations not explained. It shows a great many things.

The Master: You are talking about that one month of May.

Mr. O'Brien: I am talking about many other things.

The Master: But the only mutilated page that I recall was that month of May.

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Mr. O'Brien: That is the only mutilated page that was called to your attention.

The Master: That is what I mean.

Mr. O'Brien: Yes, that is all. We came forward and did a lot of things that the complainant ought to have done in order that there might be no question after we got through this case about our having fulfilled all our obligations. We used the subpoena, and he used the *subpoena duces tecum*, and brought in here some data to illustrate just what might have developed had the complainant come forward with

47494 the proofs which the Court will require. The limitations on the trial, the limitations on our time, the requirements upon the complainant to produce all this testimony, of course places a limit on what we were doing, and what we did in the presentation of some proofs along this line; but I say to you that what has been disclosed here in regard to the manufacturing books is a fair indication of what might have been developed if we had had these men under cross-examination. Right on that little page there of May, 1910, there was not only proof of the unreliability of the records, but if you take the records as being true,
47495 then you have got to discard a good deal of Woods' testimony. He said it took 4.1 gallons of oil to make 22 candle power gas, and it is shown in the record there that they went along for a number of days and made it out of 3.56, 3.57, and so on up to 3.80 gallons of oil.

You recall in this connection that when Mr. Woods was cross-examined on this matter and he was asked whether or not in preparing these hypothetical figures he had gone to and taken the results in any of the works, and he said no, his figure did not represent a composite average or composite figure drawn from the showing at the various works, and you can conceive
47496 from what was disclosed in that connection, just what would have been developed in this whole matter, the whole case would have been shaken. There was a reason for putting in only a hypothetical figure, and if that was not the reason, then they have been wantonly lax in the presentation of a rate case. I do not know who the board of strategy is, I pay every proper tribute to counsel for complainant for the arduous work they have gone through. There were some lapses in courtesy from time to time, and there were some shots below the belt, but after seven months together I think we got along pretty well. Considering that in

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matrimonial fields and other fields, where individuals are brought together, the break comes more often than it did in this case, we have done pretty well, but getting away from that good will that we bear the plaintiff's counsel, whoever the board of strategy was that planned this case, they either had to conceal, wanted to conceal the truth, did not want to bring out to the light of day the facts in the case, or else there was stupidity somewhere in coming in here with a minimum of proof and trying to get by by the skin of the teeth, because they have failed in this case, your Honor, and money has been spent recklessly in attempting to present a rate case of this kind.

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Another thing that is entirely lacking here, you may say it is cured because the books of the company were offered in evidence by the defendants, the books of the Astoria Company, the whole cost of gas at Astoria, the details of the manufacture are wanting in this case, because the manufacturing books have not been properly explained, the witnesses who made the gas there have not been produced, and you don't know —you may have some idea of limits between which the price, the actual price must have ranged, but all the rest is wanting. You do not know how much it actually cost to enrich the gas at New Amsterdam, you don't know why they do not enrich it at Astoria, and not send it to New Amsterdam; you have good grounds for suspecting that they have tried to carry on this relation between Astoria and New Amsterdam at Ravenswood just to keep the old plant a going at Ravenswood. These things, your Honor, are entirely wanting in this case, you haven't any proof in here as to justify the $500,000 paid for rentals in this case; you haven't any proofs here as to the repairs to the tunnels or the cost of the upkeep; you haven't got any proof here as to what has been done, how much has been the profits of the companies at Astoria, and

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47500 where they have been put, and I say to you in the face of a showing in 1918 at Astoria, where they are paying the interest on the bonds, the dividends on the stock that sold for $684,000, and turn over a surplus, there is going to be a whole lot of explaining, and you cannot allow any such price as they claim for the gas furnished at Astoria to the complainant company.

Now, the whole question of transferred gas is up in the air, coming to that point. The whole question of the unaccounted for is wanting. I was told that when I was out of the room something was said about Mr. Little assenting to the seven per cent unaccounted
47501 for as being fair. I do not remember that. I do not remember that. The fact of the matter, they must explain why they could have two and one-half per cent or three per cent only unaccounted for for four or five or six years, and have it seven per cent today. And I will say to your Honor that after Mr. Teele's explanation, Mr. Brundage's attempted explanation of the basis of determination of debits and credits of transferred gas, and after having Mr. Woods upon the subject, you cannot and I cannot today say just how that whole thing is arranged. We do know that there is a basis of division, that part of it is on one theory and the balance is arranged
47502 and distributed under a proportion based upon the miles of mains, irrespective of the size of the mains of each company. That whole thing has got to be explained, and in the attempted explanation there is nothing but confusion in the record upon that subject, and you will find when you come to go into that matter the Courts are bound to say, "Why, this thing is unravelable unless they get all the companies in together." When they see that situation with respect to transferred gas, and see that mass of figures and how they attempt to make seven per cent unaccounted for, they are going to say that is not explained prop-

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erly, but is in entire darkness, and irrespective of what any man may say as to what is a fair amount of unaccounted for gas.

The Master: Well, do you make any claim on that subject?

Mr. O'Brien: Why, I claim, your Honor, that if according to Mr. Woods' testimony it is two and a half or three per cent a few years ago, there is no explanation of why it should be any more today; and if you go over the record in the case, it is based on an arbitrary arrangement of equalizing among the companies the transferred gas, the unaccounted for, and that part of it, and that is without any explanation as to the fairness of the basis of the distribution of the unaccounted for, and that part of it is based upon the comparative proportions of miles of mains. Now, that is entirely inadequate for a case of this kind. It does not matter that what they claim, seven per cent, is, of course, apparently economical when compared with seventeen per cent of that plant down at Bay Ridge, called the Kings County Lighting Company.

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Now, as I have said before, the burden of proof has not been met, and I won't say any more about the underlying records. There is no proof here about the gas sold; there is no proof in here as to the total send-out; the statements have been made about plant capacities in a rambling general way. What do you know about the meters? I know how you were impressed when you went into that highly enameled meter house over in Astoria, and you saw those polished drum meters there. I know how it impressed you as a piece of mechanism, but you and I don't know whether they are correct or not, and you and I don't know what corrections they have made for temperature in the manufacturing records, and you and I don't know the sum total of the consumers'

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47506 meters showings for a given year, and you cannot assume it, and you cannot say it was up to the defendants to go and get all the records in the commercial offices and get all the reports of the readers of the meters, and determine whether or not there had been a mistake. Now, where is the obligation? Who is going to take up the burden in this case of showing that those totals of the consumers' meters and the showings of the works meters are correct? Now, that has been entirely wanting.

I will tell you another thing that is a glaring defect in the case: The inventories. With all the other
47507 elements of expense that must be eliminated in this case, it won't do to say that a variation or an error in the stock accounts, the taking of stock at the beginning or the end of the year was, considering the sum total of the operating expenses, not appreciable. It won't do, because every dollar counts, and every fifty thousand dollars counts, and every hundred thousand dollars counts, and it affects the results in this case, and I say, your Honor there is no proof in here as to the inventories. What do you know about the stock on hand at the beginning or end of the year? What has been shown in the record as to the problem of some reliable employee of the company
47508 going out at the end of the year, or at stated intervals and making an inventory of the amount of coal on hand? What has been proven as to the amount of oil on hand? Are you going to say because they received the books in evidence and gave the defendants a chance to go to the seventeenth floor of the office building and knock on the door and ask for some underlying papers, that they met the requirements of proof as to the stock on hand at the beginning and end of the year? No. A serious defect in this case, your Honor, and it is a reversible error not to require them to bring in and show you that they have kept inventories from time to time.

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And I want to say in this connection, without going into the details of the heated controversy which we had from day to day trying to get an inventory of the complainant's property, but that demand for an inventory was never met, the requirements when we came before Judge Mayer and he suggested that we go to the upper chamber there and meet the company and sit down with the Master and get what we wanted, and when we went there and did that we could not get it, and you were disgusted yourself with the way they kept acting when they were not producing the information that was wanted, and they were not producing when Mr. Simpson had declined to produce 47510
the papers to sustain the records made in the main book, and where you told them that if they did not produce them you were going to allow this case to go on, and let the defendants take the time that was necessary in cross-examination. Your Honor, that was a fair indication that they did not want the truth to come out, they want to put in this chicken fed evidence out of the hot house, where they are trying to minimize the proof here and get through by the skin of their teeth. This is the result we have had, and I therefore say that their action in connection with the inventory stamps the plaintiff as not being willing to disclose the facts in this case.

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The question of labor is all untold; the requirements of labor are not met by Mr. Woods coming in and saying that in my Utopian plant, in this imaginary plant of ten million capacity, I would have so many men for this job and so many men for that job, at a given price. That does not meet the requirements.

The Master: Talking about labor, do you contest Mr. Woods' statement that the price of labor has gone up in the way that he has described since 1906?

Mr. O'Brien: Well, I do contest it. You will recall my cross-examination on that. We hardly went

47512 into that subject before your Honor saw the proof of it, you know, where they set up various records that were altogether different from their books, they were altogether different from the gradings that they maintained in their pay rolls.

The Master: I know, but isn't it a fact that, for instance, the amount that must be paid on ordinary labor today is considerably higher than it was in 1930?

Mr. O'Brien: There isn't any question about it.

The Master: How much higher, would you say?

Mr. O'Brien: I would not want to say. There
47513 is no question about it. What we say, though, in regard to gas company employees is, that as a class, they are a class of workers that so far as my memory and your experience go, they are a pretty stable class.

The Master: I know, but labor has gone up.

Mr. O'Brien: They have not been united, they are time-honored employees, a great many of them, and I suppose they are about one of the last to feel the influence of the rise or fall in the field of wages.

The Master: Well, do you contest Mr. Woods' sworn testimony that certain classes of labor get the prices that he has testified to?

47514 Mr. O'Brien: I do. I say that in regard to this case you are bound by the actual payments made for labor.

The Master: Yes.

Mr. O'Brien: And at this time I am not able to compare his statement with the statement in their books, and—I mean in their books of account or their time books.

The Master: But you did not offer any evidence—

Mr. O'Brien (interrupting): I never fell, you know, for this Hindenburg Line that they tried to set up to protect the Seigfried Line. I never bit on that.

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The Master: But you never introduced any evidence to meet the testimony of Woods that certain classes of employees were paid certain scales of wages, certain prices, certain amounts.

Mr. O'Brien: Well, the prices of Little were pretty fair prices, they are even better than the company offered in some respects, but I say, in surveying the results of a given year, it is up to the company to prove that these men were employed. Where I tried to point out to you in the manufacturing book a variation between the actual facts and the figures that—or the estimates that were made by Mr. Woods, and we were met by the statement of the plaintiff that 47516
the number of men, employees, set down in the manufacturing book, that was only statistical, that did not mean anything. Well, now, you know better than that, your Honor; you know that they do not engage men up in the works, 99th Street and 21st Street, just to juggle figures all day long and play with them, put them in the book and rub them out and take them out. If they set down on a given day a number of men employed in producing the gas that was produced on that day, didn't they mean that to be the permanent record? And if that varies from Mr. Wood's statement, which are you going to take? You have got to doubt the books, if you take Mr. Woods' tes- 47517
timony.

Now, they cannot come in building up this artificial figure, this hypothetical figure, and throw any justification around the books, no more than you can take the price of 6 cents paid to the Standard Oil Company, without knowing for how much the Standard Oil Company of New Jersey sold the oil to the Standard Oil Company of New York, and without knowing how much the Standard Oil Company of New Jersey exported gas oil for. You have got to have those facts before you. You cannot say, "Well,

47518 as long as the concrete, actual fact was less than what Mr. Woods says it ought to be, therefore we will accept it." Why, that artificialty will never do under the requirements of a rate case. Now, as I said before, the witnesses lacking could have been brought forward in this connection, and we could have disposed of them promptly, and you would have gone along with a certain degree of examination, for while it might get down to minute detail, if the underlying records were well founded, confidence would grow as you went along, and your Honor would then make a ruling that sufficient was shown along this path-
47519 way or that to bring out the points favorable or unfavorable to the underlying records, and you would have proceeded rather further, and you would have saved a whole lot of time, and the case would have been decided much surer, and the result would at least have had a firmer foundation than it is going to have in this case.

Now, your Honor, I might say as to supplies generally, that there is no proof here. Mr. Gawtry is only a dilettante. Mr. Gawtry did not talk like a man of works. They ought to have produced Hannan, or the man that really bought and sold supplies of the company, or they ought to have brought some-
47520 one in that could have talked conversantly about these things, not a man who just looked over the statement before he came into court. That did not justify the contracts. There ought to have been someone here who would take up the minutes of the Executive Committee and go on from month to month and say, "That contract was entered into and there were bids asked and the price we paid to the United States Cast Iron Foundry Company was a better price than we could have gotten somewhere else, and by reason of Mr. Brady's being connected with the United States Cast Iron Foundry Company, we were able to save

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the complainant a whole lot of money." Now, they could have done that with the major contracts that were involved in the purchase of supplies, and they could have gone on with an open book, the way I would try a rate case were I in the place of the counsel for the complainant.

Now, as you go along over the record you will find question marks from almost page to page. There is no proof as to the amount of oil that was used, except what is transcribed in the manufacturing book, and I might say right here that I trust your Honor will determine in making your report whether or not the manufacturing books are in evidence or not in 47522
evidence. We certainly will want to have recourse to them, we want to feel that they are either out or they are in, and if they are in they are to be used. Of course, if we act on the theory because we referred to one page that they are in, then it will be concluded that they are in evidence.

The Master: Well, what do you say?

Mr. O'Brien: Well, I say the manufacturing books have not been proven.

The Master: Do you say they are in evidence or not in evidence?

Mr. O'Brien: I offered some pages of them in evidence. Now, the question of the time books, the 47523
time of the men is entirely uncovered. The question of drip oil of all the companies is quite an item. There is no proof of the unaccounted for, there is no proof as to the cost of renewals and replacements, there is no proof, of course, as to the apportionment of salaries between the companies, and in regard to that I am not going to reiterate what Mr. Chambers so forcibly spread before your Honor. I do not think it needs any argument. The whole thing is axiomatic to me, it is so obvious, this question about apportioning salaries, that it is ridiculous to argue it. It can-

47524 not be said that these men have got to have these large salaries charged up to the gas end of the business when they are practically running all these other companies. If you apportion the salaries according to the alleged profits of the companies, I suppose you ought to charge a good deal of it up to the Edison and United Electric Light & Power Company, but I certainly do not agree with the proposition that this company needed George B. Cortelyou to run it. He brought all the distinction, the eclat of a man who had gone through public life for a number of years, and no doubt his advice will be needed from time
47525 to time on matters of moment to that company, but you and I know enough of the workings of the company, as disclosed in the trial of this case, to be able to say that they could let Mr. Cortelyou and two vice-presidents go and take anyone of the vice-presidents and run this company, take Mr. Carter and discard everybody else and run the company, or take Mr. Addicks and let Mr. Carter retire and run the company; or if those two estimable gentlemen were anxious to rest easy after years of toil in the vineyard of gas making, take Brother Thomas here, with all his vitality and robustness and put him in charge, and these old wheels will continue to turn and the
47526 Gas Company run on just the same, and you do not need the $40,000 man or the $22,500 man, and you can give one of them a good fair salary.

Mr. Chambers: Or let their descendants run the plant.

Mr. O'Brien: Yes. I do not know whether there is any Thomas, Jr., or Addicks, Jr.—

Mr. Chambers: There is a Carter, Jr.

Mr. O'Brien: So with the matter of overhead expense. I am not going to take up the time on that. We will go in there and you will save 5 cents to this company without wasting more than a half an hour.

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and you would save 5 cents in the price of making gas right on half a dozen of the very heads. The taxes alone will save you about 3 cents on the price of gas. On the question of superannuation—

The Master: Well, don't discuss superannuation, because I am against you absolutely on superannuation.

Mr. O'Brien: I know you are against me, but I am going to say one little word about superannuation, that I am with the welfare idea, and I am with the idea of bringing humanity into the every day business relations, but I say in a case of this kind, in a rate case, you have got to prune your rate expense 47528
and eliminate a great many items, when you determine the actual cost of making gas.

The Master: So far as I am concerned, in any report I am going to make, the consumer will pay his share of superannuation expense, and I think it is a proper expense.

Mr. O'Brien: Well, I feel as I said, your Honor, when we discussed that before, the average man, the working man today, wants his in his day's wage, and not in the promise that he is going to get it when his teeth fall out or his eyes are red and rheumy.

The Master: Yes, and I think he wants it both ways, he wants a living wage, and he wants to be 47529
sure that if he gets so old he cannot work any more he will not be thrown into the gutter, and it is a proper attitude for a company like this to take, and I am for it, and if I am wrong, some other Court will have to overrule me, that is all.

Mr. O'Brien: Your Honor, I will pass over the question of candle power too, in the face of your ruling that there was a substantial compliance. The principle of day *minimus* would certainly not apply to a mandatory statute requiring 22 candle power; there is no substantial compliance going to be accepted in a

47530 matter of importance of that kind. I call to your Honor's attention Judge Greenbaum's decision on that subject, and I trust that before you finally sign your report—

The Master (interrupting): I disagree with Judge Greenbaum. If he has made any report in conflict with what I have indicated, I am against him. As I understood him, there was no—he stated that there was no honest effort on the part of the Kings County Lighting Company, and whether that was justified on the evidence I do not know, but so far as that went, he said there was no honest compliance with the statute,
47531 and of course if I find here there was no honest compliance with the statute, I would so find too.

Mr. O'Brien: Well, you are taking that ruling of the Federal Court then.

The Master: No, I am not.

Mr. O'Brien: That construction that they made on the application of the Brooklyn Union Gas Company for injunction *pendente lite*.

Mr. Chambers: That is on appeal.

The Master: I am simply pointing out to you that I am not in disagreement with Judge Greenbaum's finding of fact. He might have been well justified in finding as the fact in the Kings County Lighting case
47532 that they did not attempt to comply with the statute, and therefore were not entitled to equitable relief. I am finding as a fact here that this company did honestly attempt to comply with the statute, so far as it could be complied with.

Mr. O'Brien: Well, I won't attempt to argue that any further then, I disagree with your Honor.

The Master: I have made up my mind on that, and I have so stated.

Mr. O'Brien: I think you are falling into error. They have got to comply with the statute, it is mandatory, there is no such thing as substantial compliance.

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The Master: Likewise stupid.

Mr. O'Brien: And when you refused to allow proof of the habitual falling off by this company in the required standard year after year, and then fall back on a statement made by Mr. Hine as to a certain six months and say that establishes the good faith of the company, you are making serious error, and that is all I have to say about that now.

The Master: You do not get the point. That does not necessarily establish good faith, but it establishes the unreliability of all of those other tests.

Mr. O'Brien: But your Honor, I am not for Mr. Hirschewitz and Mr. Frank and the others, but I want 47534
to say that Mr. Hine's tests conform with the ones that were put in evidence.

The Master: You are relying on the opinion, which must be taken, in my judgment, as part of the order made, and relying upon the statements there made.

Mr. O'Brien: Well, I won't attempt then to analyze the testimony of those men. I think they gave—they stood up splendidly, and they gave a clean-cut statement, they were a credit to the City of New York and the public service of the municipality.

The Master: I am not criticising them as individuals, I am simply basing my decision there upon the unreliability of any testimony based upon the observa- 47535
tion of particular individuals.

Mr. O'Brien: What are you gong to say about the failure of the company first to come forward and prove this? What are you going to say about the failure of the company in rebuttal, it having been shown that they had offices where they made tests in the same building in which the City tests were made, what are you going to say of their failure to come forward in rebuttal and show what the tests they made were? Isn't there a fair presumption out of those facts that they were unable to show a better test or a

47536 more favorable test to them? It will just pile Pelion on Ossa to add another word to that account, and I hope before you put the ink on the paper that will embody your report, you will think further on that point and think further on all the others. You have an obligation here that is about as serious as any I know of on any man to sustain in connection with litigation in our generation. You have expressed yourself from time to time, and we more or less attempted to be frank with you, and forecast what your decision is going to be, and I trust in the moments that are left in the days that are left, you are going to realize
47537 what it will mean to have another board of litigation in a rate case. It means a lot to the consumer and to the stockholders of the Consolidated Gas Company, but just as sure as we are living, this case has got to be retired, it is full of holes from end to end, there is no proof in here of any kind to sustain the finding upon the vital facts in the case. They have not come forward and excused themselves for not making more coal gas; they have not explained to you the variations in the repairs between coal and water gas in 1918 and 1919, and have not gone into the details of making gas in Astoria, they have not explained the whole question of the minor expenses that enter into
47538 the making of gas, the office expenses. The whole attempt has been made from the beginning of the case to throw over on the defendants the burden of proof and to have practically made them sustain it as complainants in the case, whereas that obligation is on the complainant, and right here let me say it has been a stupendously ridiculous proposition of attempting in a rate case to build up a production cost, or to build up a value or a rate base out of some one's say so as to how much in dollars per thousand cubic feet gas made that cost is, and to say that there is proof or requisite proof in a rate case as to the base in the

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exhibits or the reports that were read into the record during the eleventh hour of the case when Mr. Woods was on rebuttal, is simply ridiculously absurd, and stamps the whole case as being ridiculously tried, and to say that there is any probative force in a report that Mr. Woods said he made some time ago to his superiors—

The Master (interrupting): I did not take his report at all.

Mr. O'Brien: You are taking it as to many of those facts.

The Master: No, I took his testimony.

Mr. O'Brien: You can not take a statement of 47540
Woods, and that is not any more.

The Master: I took his sworn testimony.

Mr. O'Brien: Your Honor, unexplained and undefended, that isn't any more than if they made the allegation in their complaint.

The Master: I took his sworn testimony in the same form that I took Mr. Sangster's and Mr. Little's testimony.

Mr. O'Brien: Mr. Woods never qualified as to the value of plant equipment or works equipment, he was never examined, and it was never received by your Honor upon that subject, and I think, if I remember right, there was an exclusion made when he came to 47541
his testimony as to the cost of the buildings, and as to the cost of plants equipment. There was no one in the case, and there is no place in the record where you can say there was any proof given to your Honor as to value, no matter who it was by, who could say by one wave of the hand that in New York City it will cost to put up a plant some $4.50 or $5.00—

The Master: He did not say that.

Mr. O'Brien: Well, whatever his figure is; I do not remember his testimony.

The Master: He did not say what it would cost to put up a plant.

47542 Mr. O'Brien: I am speaking now about the estimate given of the cost expressed in dollars per thousand cubic feet of gas made.

The Master: No, he never gave any such testimony. His only testimony is that in his opinion, in January, 1919, a gas making plant was worth $157 approximately per thousand cubic feet of capacity.

Mr. O'Brien: Well, that hasn't any more value than if I say it to you here.

The Master: Oh, yes, it has.

Mr. O'Brien: The witness was never qualified on it, has never put forward his testimony on that subject.

47543 When Mr. Little was asked about these matters too, he was perfectly honest, and I think it was admitted by your Honor that you wanted it for your information, and you were thinking about it and wanted to get some little light on the subject. Now, if we take Woods' testimony, I think you will find this plant of the complainant company is worth about one hundred or even close to one hundred and thirty million dollars, the whole property of the company. And that it is absurd to talk about such proof in a rate case as filling the requirements as to the value of the base. And I say to you that will be consistent with a lot of the rulings you have made—

47544 The Master (interrupting): That has some virtue.

Mr. O'Brien: It has a virtue, it is a bird of the same feather, it is a bird of the same feather, and just add it in, and put it in there and make this chop suey delicious proposition, from a legal point of view.

I think I have given you a great many of the ideas that are running in my mind. There is no use of analyzing the situation at Astoria. There is no occasion for me going in there and justifying or attempting to analyze Mr. Little's testimony, it speaks for itself, he has detailed there as no other witness that I know of in a rate case has ever set forth, with a minuteness

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that compels attention. I do not know anybody that ever came forward in a rate case as an expert and spread before the Court every detail or item as did Mr. Little, and he showed you that there would be a profit in the gas making business even if you were to assume for the purpose of rounding out the figure the overheads set forth in the Teele exhibits, there would still be a profit of practically ten cents without what might be saved in the overhead and the other distribution expenses, and I want to say that the eliminations that must be made from the overheads will at least mean a result of another deduction of ten cents.

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You take the taxes, and you take the various other expenses that have not been justified, you take all of the commercial expenses, the general office salaries, the miscellaneous expenses and all that, and you add them all together and make your eliminations from the unnecessary or unexplained and unjustifiable expense at Astoria, and you have got here this company making about 20 cents.

The Master: Mr. O'Brien, have you ever analyzed the question of taxes to the point of being able to tell me what you believe is the correct figure that ought to be added to the cost of gas representing the tax item?

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Mr. O'Brien: Why, no, your Honor, I have not. I want to say this, that that is a point that I left to my colleagues to cover, so far as the details were concerned.

The Master: Have you, Mr. Chambers?

Mr. Chambers: Expressed in cents per thousand cubic feet, you mean?

The Master: Yes.

Mr. Chambers: No.

The Master: Have you, Col. Hayward?

Mr. Hayward: Yes, we have it.

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The Master: What do you figure it to be, gas delivered?

Mr. Clark: You mean taking in the other plants, and everything?

The Master: No, I mean taking the record as it stands, from every angle, whether you have reached any conclusion as to what you believe is a proper charge that the consumer ought to bear for taxes for a thousand cubic feet of gas delivered?

Mr. O'Brien: Well, your Honor, I think that is a matter of proof as to what they actually pay.

The Master: Well, it may be that the Public Service
47549 Commission has figured out in cents per thousand cubic feet.

Mr. Hayward: I think if we have not, we can figure it. We have Astoria separate. May I ask one question for my own benefit? If I am going to follow Mr. O'Brien, did Judge Ransom, or did he not, file a brief?

The Master: I have not seen any yet.

Mr. Hayward: I filed my brief, pursuant to the request of the Master, and furnished him with a copy of it before he argued, and had hoped to have the same privilege and the same courtesy from him, and he stated yesterday definitely, or the first day we were
47550 here, that he would file a brief before the night fell, that he had it all prepared, as your Honor will remember, and I have hoped—

The Master (interrupting): Judge Ransom told me when we adjourned that he was checking it up and would hand it to me this morning, but I have not seen it yet.

Mr. Hayward: He said he would file it that day, and that was three days ago.

The Master: Yesterday.

Mr. Hayward: Yesterday. We want to have it before we go ahead with our argument.

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Mr. Ransom: If I do not eat any lunch, I will give it to you today.

Mr. O'Brien: There is just one point, your Honor, that I will refer to before closing, and that is this, that you have made the record clean cut on the question of excluding all reference to moneys, profits, income from any other source than the gas business.

The Master: Yes.

Mr. O'Brien: In that I think you have made another serious error.

The Master: Well, the Court will have to reverse me if that is so.

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Mr. O'Brien: The question of the funds, where they were derived from, how much of them are gas profits or other business, there may have been moneys set aside for a depreciation fund under the name of a depreciation fund or under some other name. Whatever may have been set aside under that and tucked away or distributed into various other accounts, all of those are matters that must be explained, and the question of the relations between—

The Master: Well, this company was entitled to make a profit at 80 cents under the statute, wasn't it?

Mr. O'Brien: The company is entitled to charge a fair price.

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The Master: The statute contemplated that this company would make a profit at 80 cents, didn't it?

Mr. O'Brien: No, 80 cents was only the maximum, it would still have to be a fair price under 80.

The Master: Well, it was contemplated they would make a profit at 80 cents, wasn't it?

Mr. O'Brien: The legislature saw fit to make 80 cents the maximum.

The Master: Yes.

Mr. O'Brien: For a given territory: but the price

47554 would still have to be a fair price. Now, if there were funds that were derived in other days from the profits of the gas business and they were set aside and tucked away and buried and distributed throughout various accounts, then this complainant, upon this action, is bound to explain that.

It is incumbent upon the complainant to explain that, and they have not done it in this case. Then again, the question of the relationship between the company and the Edison Company and the United Electric Light & Power Company is another matter, I believe, in which you have made a serious error. I
47555 know that you will fall back on the decision in the Municipal Gas Company case, rendered, by the way, on an appeal that went up on a demurrer, with only the two or three page simple abbreviated complaint to the Court.

The Master: I think the reasoning was right, though.

Mr. O'Brien: To the effect that you could not require a company doing a gas and electric light business to recoup its losses in the gas business from the profits in the electric light end of the business.

The Master: Right.

Mr. O'Brien: That suit, however—I mean that de-
47556 cision, was rendered only on a demurrer, was rendered without any proof of details before the Court. You have here a company that was bought by the Consolidated Gas Company, that was presumably bought by the profits of the gas business. You have here a situation where the parent company has complete control over the gas and complete control over the electric light, you have the testimony here that the electric light is profitable, and you have the testimony that the extension and development and exploitation of the electric light business had a serious damaging effect upon the gas making industry, and in fact, as

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Mr. Carter put it, it was a matter of life and death for them to go out and try to find some way of keeping the gas business alive, and under those conditions the very least that might be said is that it is incumbent upon the complainant to come forward here in this case to show to your Honor that proof from which you can draw a thorough conclusion that they have not exploited and have not developed and have not manipulated the electric light end of the business to the detriment of the gas business. In other words, you want to know how the gas business prospered, what would be the *quantum* of business fairly under conditions where it was not invaded by this company also under the control of the parent company. There is a fair presumption that if there was more money being made in the electric light business, that they would let the other slumber, that the gas business would suffer, that they would foster the extension of the business of electric illumination, to the detriment of the gas business, and that any returns made in the shape of dividends would result in injury to the gas business, and under the competition, under the overwhelming opposition, you might say, of the electric light end of the business, under conditions of that kind, there is a burden upon the complainants that they have not met, and it may be, if they went to proper explanations of that, I believe that the Court would reach a point where you would have to take into consideration the greater profits that were being made in the electric side of their business. In other words, your Honor, whatever may have been said by the Court of Appeals in the Municipal Gas Company case does not apply here. Here you have proof, here you have facts, here you have testimony. In that case all they had was a simple demurrer to a very much abbreviated complaint.

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Now, to close my few words, I am going to say

47560 one parting word to you and the officers of this company, and that is this, your Honor, that this matter, this litigation, is perhaps the most important in a decade in these United States. Errors should not be made. It is not too late to mend the errors that have been made in this case. But just as sure as there is a finding made in favor of the company upon their complaint in this case, just so sure will this case come back for a new trial. There are errors in here that have not been cured; there are errors in here that are fundamental and vital to the cause of the complaint in a rate case, and I trust, therefore, that in the time
47561 remaining between now and the point where you sign your report, that you will rise to the situation and you will realize the necessity of having this case go right, no matter what the embarrassment may be, no matter what the temporary chagrin may be upon the part of the complainant and its legal representatives. The case has not been put forward with a frankness required in a rate case. We have not had the proofs, and the requirements of the decisions as to the presentation of certain details of evidence have not been met by the alleged privilege given to the defendant to consult the accounts in the office of the complainant company.

47562 In this connection I want again in closing to call to your mind the fact that for most of the time—well, for at least the first three months of this case, or three months and a half to four months, the books of account were in the court room during all of the court days. That would mean at least down to late in November, when they were, I believe it was November, taken away, and that there was a consequent lack of opportunity to get at them; but that of course is a minor matter, compared with the refusal upon the part of the company to come forward with their proofs as to the underlying details and show just what these

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facts were in connection with the cost of making gas, and if that had been done instead of bringing in here a hypothetical figure of Mr. Woods, asking him to sit in judgment upon himself and set up a hypothetical figure that might justify the actual figures, why, we might have had something here that would be worthy of an argument at the close of the complainant's case. But what I have said to you, your Honor, in these hasty remarks, will give you some idea of what is in the minds of the defendants. I think a great many errors have been committed, your curtailment of the cross-examination, your attempt to dictate and control the examinations of the witnesses, your limi- 47564
tations placed upon the offer of proofs, and many other things that were done in the case, expressions of convictions as to various matters as we went along, indicates to my mind that you were afflicted by the atmosphere that we have been beclouded with, the high cost of living, and these are matters that we have from time to time called to your Honor's attention. There is no particular good to come from reiterating them at this time, but I do trust that in the time remaining between now and the time you make up your reports, that you will realize just what these errors have been, and while the opportunity is still with you, will correct the errors that have been committed.

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In closing, I want to thank everybody concerned in the case, my colleagues and the men who represent the complainant company for what courtesies have been received, and I trust that we may, whatever may be our joy or our sorrow or disappointment or chagrin or illusion, that whatever may come of it will be a just result, a fair result for the consumers and for the companies involved, for no good can come to anybody by having a decision that won't stand water. It will be disappointing to everybody, it will come at a time, perhaps a year or two years hence, the final re-

47566 sult will come out one or two or three years hence, when if it is a reversal of the court below it will weaken the confidence of the people generally in our courts, and I want to say that you may draw some idea of what the courts will do in this case from the severe rule that they have laid down in all the rate cases that have gone to the United States Supreme Court, in practically every one of which they have sent back the case for one reason or another, and have ruled against the utility which brought on an action to test the constitutionality of the statute or ordinance.

47567 Recess until 2 o'clock P. M.

Afternoon session.

Mr. Hayward: You asked a question about taxes before recess, and I would like Mr. Clark to answer that question. He can do it more quickly than I can.

The Master: All right.

Mr. Clark: We figured on taking the taxes that are shown on Exhibit AA-451 and excluding the Astoria taxes, excluding the gross earnings tax, the income
47568 tax and the excess dividends tax as taxes would not be necessary if this was not a separate corporation, which we claim it should not be, and we come out with a figure of about six cents for 1918 and about five cents for 1917.

The Master: How about 1919, did you figure that?

Mr. Clark: I have not the figures for 1919, no.

The Master: Six cents you figure for 1918?

Mr. Clark: Yes.

The Master: All right.

Mr. Hayward: I will be very brief, if the Master please. I attempted to put in a memorandum as you

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asked Tuesday—what we could get ready on the typewriter between Tuesday and Monday morning, when you said we had to have it in. I had no idea, of course, that I would be confronted with a carefully prepared and masterfully prepared, thorough, prudent brief, such as I find on the table this noon, and I do not want to write another brief. It is not that I am making any complaint about that, but simply to apologize for the memorandum that we file. But we did the best we could in the time allowed, and I think we are the only counsel that endeavored to comply with your request and have it on time.

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The Master: Judge Ransom's brief is more elaborate than any I had expected to receive or anticipated I would receive.

Mr. Hayward: Yes. Of course, it is more elaborate than anything I thought you wanted.

The Master: It is more than I anticipated. I expected a memorandum such as you handed me—a ready reference to some of the points that have been discussed. But it is all right as I glance through it.

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Mr. Hayward: It will not take me but a very few minutes, because Mr. Chambers and Mr. O'Brien have covered practically every point that I wanted to make. I do hope that simply because the Master has said during parts of their argument that you had reached a conclusion on some of these matters, you will not forestall at least my telling you in a very few words my theory on those matters, in the hope that you will still give it additional consideration. I do not think it would be fair to reach a conclusion finally before all the counsel I have been heard on the matter. There are two or three points that you seemed pretty definitely to sew up this morning that I would like to be heard on, if you do not object.

The Master: If you can say anything that will change my mind, then I will change it.

47572 Mr. Hayward: I do not know, but I surmise that I could.

To start off with, it seems to me that the rules that you have applied in this case, which you say have safeguarded the defendants and the public, the safeguards that you have thrown out and made an excuse for abandoning the laws of evidence, have not been in any manner sufficient at all.

It has struck me from your comments as the arguments have been going along, the argument of Judge Ransom and the others, that you were going to decide this case to a very large degree, at least, on
47573 the fact that your eyes were open and your ears were open. In other words, that you were going to take judicial notice of a great many matters. Of course, you can take judicial notice of a great many matters, but as far as our being safeguarded in this case is concerned, as far as the complainant being required by you to prove a case according to law, the rule of law set down by the courts and the laws of evidence as everybody in the world has always known them, you might have said, if the Master please, the day this complaint was filed, with as much verity and as much forcefulness as you say it today concerning those alleged safeguards, the day this sworn complaint was
47574 filed Judge Ransom with his little petty restrictions, which did not worry me half as much as they did some of the other counsel, as to the unavailability of the books and so forth—I think I was more patient with him than the others were about that—it struck me as absurdly little all the way through, the attitude he took about his books down there.

But to say there was frank disclosure and that because these books were open to our inspection all during the trial of this case that took the place of the legal safeguards we were entitled to, is absurd. In other words, you have said in effect in this case this:

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"These people have filed a complaint which they have sworn to, in which they have stated to me they have been losing money in the manufacture of gas ever since 1906; if that was not true, you could have gone to their books and found it out and brought me the proof to offset that."

Of course, that is not the theory of the law or of any trial at all. You have in my opinion, although you have not stated it, come to a conclusion that if this company from 1906 on down had been making an exorbitant profit, we may call it, or an unusual profit, the Public Service Commission or some other agency being only limited by the maximum of this law and 47576
not by the minimum, would have reduced it; therefore, because the Public Service Commission did not reduced this rate below 80 cents during those years, and therefore because you reach a conclusion that the present high prices are going to remain on a high fixed level for a number of years, it must necessarily follow that this company has in the last year or so, or will in the future, lose money.

As I analyze your mental processes, that seems to me to be the way you have gotten yourself into the state of mind that you have. I can only say that seems to me, even if their contention be true, if the Master please. Suppose that for a minute, that I can get my- 47577
self into your mental attitude on the thing; that does not excuse them from following the rules of law and the rules of proof for cases of this kind, and I do not believe that even if a reviewing court can say, "Well, the Master was probably pretty near right about that, if not quite right—" I do not believe that the courts are going to prostitute themselves to the extent of allowing a case to be proved in that way, where so much is involved and where there is such a severe rule applied to this particular class of cases, as severe a rule as in a criminal case for first degree murder.

47578 As I say, all of that might have been said on the day they filed their complaint. I think the Master has been manifestly unfair taking that stuff that he was too good a lawyer not to know was inadmissible. You said the other day that I conceded there were some modifications of the common law rule, perhaps I do not say they were modifications of it; they were simply perhaps extensions of it, conveniences allowed. You asked me if you had to build a cantilever bridge, say, because I wanted you to, if you could not use a suspension bridge to get across this gap of time and detail, and all that sort of thing. My answer to that
47579 is you could use any kind of a bridge that you wanted to, to get across this painful gap of proof, so long as the medium over which you travel was from the original source of the proof, backed up by somebody's oath and the right of cross-examination of that somebody, so long as your bridge touched that bank and the probative goal at the same time, one could safely cross that bridge.

That was the extension of the rule made in every case that was cited here and in every case that I have any knowledge of. But what you did in this case, if the Master will pardon my carrying out his illustration further, you did not go across a bridge that touched
47580 both banks at the same time, as they did in that Northern Pacific case, or whatever it was, where they had the clerks work under the supervision of the officers; your method of crossing this gap was not over a bridge made for convenience sake, which touched both banks at the same time and kept the old rules of evidence and the sanctity of the oath and the right of cross-examination in mind. What you did, you started out on a ferry boat in a fog, with this precious cargo, and blundered around the river with it. Not only that, but you transferred that cargo to other boats en route, using Mr. Teele as the pilot and the other companies

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similarly as the other ferry boats. And I tell you, not because I am on the defendants' side and not because of any idea of how you are going to decide this case. I am just as sure as what my name is that no Court in the world is going to uphold a decision predicated on the evidence allowed in this case.

I do not make the slightest criticism of Mr. Teele, if the Master please, or these other witnesses. Mr. Teele was hired by this company and he did in a very able and efficient way what he was told to do. But Mr. Teele could not be any better than the sources from which he worked, which were absolutely useless as far as any probative value is concerned.

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The Master: Do you give any weight at all to the powers of the Public Service Commission, its supervisory power over these books?

Mr. Hayward: Do I give any weight to it?

The Master: Yes.

Mr. Hayward: Not in the way that you did, as repealing the laws of evidence and the rules of evidence for the proof required in a case of this kind, no.

The Master: For the purpose of our bridging a gap or getting across a gap, as you call it, in some safe way. Do you not believe that the supervisory power of the Public Service Commission over these books of account must be taken into consideration in arriving at a conclusion as to whether they have been kept in accordance with the law?

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Mr. Hayward: No, I do not think so, if the Master please—that the fact that the Public Service Commission or the uniform system of accounts may have been created for many purposes, perfectly legitimate purposes, changes the rule of law as to the proof required, and the method of proof. I do not think that any rule that the Public Service Commission or even a statute making a uniform system of accounts for purposes of annual reports and for pur-

47584 poses of supervision by the company, can or has or does change this rule of law which requires some man, who knows the facts and will confront a cross-examination, to take the witness stand and prove it.

The uniform system of accounts might perfectly well be satisfactory and useful and desirable for many purposes. I approve of it, but I never understood it. I never did. I never knew much about it. I mean I never got to be an expert on the thing, because I could not solve it. But I could see the rule of it and the reason for it, and it certainly was not
47585 intended to repeal the line of evidence in this or any other case. It was for an entirely different purpose and with an entirely different aim, and you cannot hide behind the uniform system of accounts in this case and say that the evidence, if you call it evidence, allowed in this case, is going to stand up, because it is not going to stand up.

As I told you the other day, I am firm in my belief on that; nor will you be able, by any admissions which you claim or think that I make in this case, make up the deficiency that exists in records or books that have probative value.

The Master: I have not in mind any admission
47586 that you have made.

Mr. Hayward: I have been very frank to say what we claimed these books showed or what they did not, as you know.

The Master: Yes.

Mr. Hayward: I mean I have not tried to dodge on the thing.

The Master: I am not going to say that you have admitted the accuracy of books, or that they have been properly proved.

Mr. Hayward: And I hope you will not, because there has been no intention on my part to make any such admission.

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The Master: Not at all.

Mr. Hayward: I have tried, as I say, to be fair and frank to the Master, and when the Master asked a question I tried to answer him, and so has Major Clark, to the best of our ability.

The Master: I have in mind two angles and two roads, Colonel. Proposition 1—I never forget the contention of the defendants that the books are not properly in evidence, therefore I cannot consider them in evidence; proposition 2—assuming they are in evidence and assuming I insist on considering them in evidence, and reiterate the ruling I made during the trial, that being in evidence you have made statements in reference to them, but never by doing that have you waived your contention that you do not think them competent.

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Mr. Hayward: I hope you take that position.

The Master: There is no question about that in the world.

Mr. Hayward: We were simply pushed into a corner on this thing and took what we thought was favorable to our side of the case, not conceding that they were admissible at all.

The Master: There is no question about that. But Mr. O'Brien, when he takes the Astoria books and touches them in by offering them, is bound by them, and perhaps binds the other defendants. That is the difference.

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Mr. Hayward: I do not think that the Master, either, has bridged this gap by, for instance, the testimony of Mr. Woods. While Judge Ransom will take great offense if I say his hypothetical gas plant, I understood that is what it was. I think that the great error in this case—and I would not say a word, if the Master please, if you were not here, to my closest friend about your conduct of this case, that I would not say here now in your presence. I think you know that.

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The Master: I want you to feel perfectly free to say anything you like.

Mr. Hayward: Yes, I would say to you just as I would say to anybody else and have, I think, said it to you. I think these fifteen volumes that are before me on this table you should be dreadfully ashamed of. If I was a Master hearing a case and I had a thing like that before me as my handiwork, I would be dreadfully ashamed of it.

I think you have been lamentably lacking in firmness in the trial of this case. I think that more than fifty per cent of the stuff in these books is of no
47501 more use than chips and wet stones, and I think you could have avoided it had you been of a mind to exercise firmness and confine yourself to the thing that it was your duty to do in this case and that was to rule on the evidence as it was offered.

As I said once before, I think that could have been reduced seventy-five per cent if the Master had not been eager and anxious to discuss back and forth with all the counsel—and perhaps I have been guilty, too, of entering into discussion after it was stated, but you got fifteen volumes there, 15,000 pages, which is more than it would have taken this company to present a legitimate case in accordance with common
47502 law evidence. We have been at this thing nearly a year, which is longer than it would have taken to try this case by orderly processes, and according to the prior methods of trial of every court that I ever heard of in the country that ever started out to try a case of this kind.

In other words, instead of expediting the thing, by feeling that you were going to start a new record in this case and do better than anybody ever did before, I think we have gone a very unsatisfactory and circuitous route and have arrived nowhere. I never would be satisfied from this record in a million years

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that this company has established anything that they must establish to win this case, and I do not think any reviewing authorities would.

We have wasted the time, we have wasted the printers, we have wasted everything else—all because you did what I told you the first day of the trial, or nearly the first day, you were going to do, and that is that you were going to abandon the Polar Star without which no navigator would get anywhere. And you are not any wiser, and I am not any wiser, if the Master please, than these people who have been trying these cases for years and years and years; but we have just turned our backs on those 47594
people and struck out into a brand new field, with what result? A perfectly ridiculous result.

I venture the assertion that if you will eliminate what I call the stump speeches of counsel in this case—I am taking my share of it, although I do not think it is as much as the others, Mr. Ransom, Mr. Chambers and Mr. O'Brien—and if you will eliminate the efforts the Master has made to run a law school here and teach us youngsters who are sitting at your feet what we were presumptive to think we knew as much about as he did, you would eliminate about 75 per cent of this record, and the other 25 per cent does not prove this case.

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I can discuss this with a perfectly clear conscience. If I have erred along with the rest of them it has only been—certainly I have not been the aggressor in it. I think O'Brien is first. I would say O'Brien is first, I think the Master was a poor second, Chambers is a bad third, Ransom is fourth, and I was distanced. They dropped the flag on me long before the race was run. But I did enter into it to some extent.

Of course, the Master and I would never agree at all on those books. I do not think they amount to a hill of beans, I do not think they amount to any-

47596 thing; I do not think that any Court considering it from the legal aspect will ever consider they amount to anything.

I cannot subscribe to the theory of Judge Ransom that this is an ancient regulation and is obsolete, and that we ought to sneer at it.

The Master: Which regulation?

Mr. Hayward: The eighty-cent gas law. I think we should approach the consideration of it with the idea of the sanctity and the solemnity of that law which surrounds all laws. I think that should have been our attitude in 1906. How much more, if the
47597 Master please, should it be considered in that light in view of the years that have gone by? You cannot tell me that this gas company has let that law alone since 1906 and have been losing money all the time, as they claim they have in their complaint; because if they have they would have been busted, wouldn't they?

The Master: Why, I think on their own exhibit they show a profit in 1910 and 1911—on their own figures.

Mr. Hayward: Yes, and I think on whatever proof they have got in here they show a clear profit up to 1918, don't you?

47598 The Master: I am not prepared to go that far, because I have not analyzed the figures. But on their own figures they would show approximately earnings equal to six per cent on their claimed investment during 1909, 1910 and 1911. It seems to me there could not possibly be any complaint about it for those years.

Mr. Hayward: I think if the Master analyzes these figures the only year on which there was a possibility of doubt as to the earnings was 1918, even on their own claims. Do not forget that in 1906 this same company was before a Master, with the same sorrow-

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ful contention they were about to be plunged into bankruptcy on this rate, that everything that was said in this case was said at that time, if the Master please—they could not do it, it could not be done. If you read that record they had to meet most convincing figures in 1906 when I read their figures alone, just the same as it is in this case.

And yet we know that those figures were—I do not say manufactured with the idea that they were suborning perjury at all, and when I made the reference to what Judge Ransom called a contemptible statement the other day, what he might think was contemptible you or I or some other man might not think was 47600
contemptible. I do not think Mr. Woods wilfully committed perjury here; I think he did what you or I or the rest of us would have done—he made the best case for his people here, didn't he? That is what Mr. Addicks did and Mr. Ulrich and all the rest of them did, and if they had been working for me and had not done it I would have fired them, because I expect that kind of loyalty from them.

So it was in 1906 they made the best case they could, and so they have done it now. I do not blame them for it, but have I not a right to point out to the Master the peculiarities that surround that testimony, as I have tried to do from time to time, and 47601
as I said the Master would have done if you had been similarly situated in trying this case.

As I say, I am somewhat appalled by the size of this brief of Judge Ransom, and I had not time to go into it. I do not want to write such a brief. It may be that in the course of the next few hours if I do read that brief there are some things in there that may be palpably misstated.

The Master: Then send it down to me.

Mr. Hayward: And that the Master will not get at a glance, and I would like the opportunity of calling

47602 those to your attention, as I do in our little memorandum here.

The Master: In that connection I will say for your information and the information of other counsel, that I have to study some of these tables and some of the points of testimony between now and the end of the week, and I will not begin to write my report probably until Monday or Tuesday. So if there is anything that you want to send me in answer to Judge Ransom's brief, I will take it. I will take anything before I file my report

Mr. Hayward: I will do that, then.

47603 The Master: If anything occurs to counsel at any time before I file my report, they can send me a memorandum of it, and send Judge Ransom a copy of what they send me.

Mr. Hayward: I want to take exception to Judge Ransom's statement that it is a conclusive matter that if the rate during these years had been too high Mr. Maltbie would have reduced it below 80 cents.

I was on that commission and I know the work they had down there. I did my level best, the Lord knows, while I was there. I reduced the two greatest companies in this town several million dollars apiece on annual income, the Brooklyn Edison Company and

47604 the New York Edison Company. The Brooklyn Edison Company never appealed from my decision, and a year later said that it was right and that they were making money under it. I made an agreement with Mr. Lieb and Mr. Williams of the New York Edison that if they should try my deduced rate for a year and they did not make a return it could go back to the old rate. They never went back to the old rate.

There are a lot of companies in this town, and simply because Mr. Maltbie did not get around to reduce this rate is not any evidence that this company

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was not making a six per cent rate during the major portion of these years.

Judge Ransom has many times in this case made allusions to my being on the Commission and what my duty was to do. Thank the Lord I am not accountable to Judge Ransom for the way I discharged my duties. I did the best I could. I presume Mr. Maltbie and Mr. Hine, whom he has sneered at here, did the best they could. Major Clark was connected with that Commission, and Judge Ransom was connected with the Commission during the same time that we were. Judge Ransom forgets to say that of all the people who were connected with the Commission, 47606
who are now in this case, he is the only one who has hoisted another flag and is now sailing under different colors than he was then. So I do not take with very much patience any of the criticisms that he has to make of me in connection with my public duties that I tried to discharge.

The rate of return in Judge Ransom's brief was stated yesterday. I swear I cannot get myself down to the point that he does. It is so palpable that I figure it hurts a client to tell half the truth when the second half of the truth obviously follows. Now, his quotation on his question of the amount of rate to be paid, that he read yesterday from the United 47607
States Supreme Court, I noticed in glancing through this very voluminous brief today he does the same thing.

The Master: What does this mean, this index reference to page 2?

Mr. Ransom: That is simply the summary statement of our contentions.

The Master: There is your description as to what the rate is?

Mr. Ransom: The rate of return?

The Master: Yes.

47608 Mr. Ransom: That is the last part of the brief, page 188.

Mr. Hayward: As to proper rate of return upon investment, found on page 188, you will notice this quotation from the old case. He goes on and says, "There is no particular rate of compensation which must in all cases, in all parts of the country, be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and localities. Another thing, the amount of risk in the business is an important factor, as well as the locality where the business is con-
47609 ducted, and the rate expected and usually realized there upon investment"—and so forth. "The less risk the less right to any unusual returns upon investment."

Then the Court goes on and says: "It depends upon circumstances and locality. In this particular, with reference to the risk attending the business and the locality where it is carried on" (referring to this present case) "the complainant is entitled to return if possible of six per cent on the fair value of its property actually used in its business of supplying gas."

Taking the opinion of the Court, which Judge Ran-
47610 som was so careful to print the first half of, as if we were not going to put in the rest, is absurd.

What company is there in the world more favorably situated as to permanence and security surrounding its investments than this Consolidated Gas Company in New York City? The risk they have had twenty, thirty, forty years' experience to base it on. There is nothing conjectural about it. Everything that the Supreme Court says, every condition surrounding this company that it refers to, is the most favorable that could possibly be imagined for any company. I do not believe, with all the talk that we

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have had about eliminating all of the property of this company, eliminating this and eliminating that, you will find that it is costing us more to make the gas, even if we did not have any property that we are getting money for, that it becomes Judge Ransom to stand here and argue for forty minutes on the difference in the rate of return between six per cent and eight per cent.

If all that he says is true, their case is won even on a six per cent basis. I do not believe that the Supreme Court of the United States will ever say now or at any future time that a public utility corporation which for a long period of years has earned and is earning six per cent is confiscated, or that there is any confiscation of their property. I do not believe that the Court will ever reach that conclusion. Another Court might say that seven per cent or that eight per cent was not a reasonable return. Personally I do not think it is.

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If I were on a commission and was convinced, if the Master please, that this company was earning eight per cent, possibly if they were earning more, I would not touch their rates to reduce it. I would not think of it. On the other hand, if they were earning six per cent, I think the Master will agree with me that the Courts of this country will not upset a statute that pays them year in and year out, lean years and fat years, through and through, a rate of six per cent. I think there is that margin that ought to exist, don't you think so—that eight per cent might not be sufficient to reduce it any more than six per cent is sufficient to upset a statute?

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The Master: I think there is a good deal of force in that proposition.

Mr. Chambers: The Courts have said so.

The Master: If the record in this case were to show that they were getting five per cent, I doubt whether the Courts would upset the statute.

47614 Mr. Hayward: I doubt whether they would upset the statute.

The Master: That is not the point.

Mr. Hayward: So that is really more of an academic discussion than anything else. I do not think eight per cent is an excessive return for the company to earn; nor, on the other hand—and I cannot express it any better—should six or five per cent upset the statute, in view of the fact that your determination must come in an unusual period and in years which perhaps will never be repeated in the history of civilization.

47615 The Master: You said something in reading that opinion about fair value, or return on fair value. Did you intend to say anything about the method of arriving at value?

Mr. Hayward: As a base rate, do you mean, in this case?

The Master: Yes, did you intend to discuss it?

Mr. Hayward: Yes, I think it has been covered very fully and I think it is covered by our tables in that little memorandum. Let me say this: We have got in here some evidence of book value, haven't we?

The Master: Yes.

47616 Mr. Hayward: We have not got any evidence in this case, at least if we have I missed it entirely, of reproduction value, have we?

The Master: No, at least, there is not any as of this time, is there? What do you say about that, Judge Ransom?

Mr. Ransom: Yes.

The Master: Whose testimony, I mean?

Mr. Ransom: It is embodied in the testimony of Mayer.

The Master: No, that is not as of this time.

Mr. Ransom: And of Miller and of Mrich and Teele.

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The Master: Reproduction cost?

Mr. Ransom: If you want me to just refer to that now, or I will later.

The Master: No, hold it. But this is what I wanted to get to your mind, Colonel: As I pointed out several times, and I think this morning, the United States Supreme Court has apparently laid down the rule that a public utility corporation is entitled to a fair return upon the value of the property used.

Mr. Clark: Of its property.

The Master: Of its property, at the time the rate is fixed. I think that is the language of it.

Mr. Clark: Yes.

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The Master: What I wanted to get at was your understanding of that term, the value of the property used—what kind of value, and how that value is to be arrived at.

Mr. Hayward: Of course, it is always the fair value of the stuff that is reasonably used in the business. On the other theory, if the Master please, we might have gone into this case as I did in a case, and it almost took me a year, nearly as long as this case has taken, on the theory of depreciation, using the rule of New York—the old straight-laced rule of thumb as to depreciation, if a piece of property has an estimated life of twenty years, we will say, 47619
you can arrive at its present value by taking its original cost and dividing that by twenty and deducting the number of years of age it has.

The Master: And whose estimate will you take as to the life?

Mr. Hayward: Of course you get back to that proposition. Those things are unsatisfactory, but, as I say, we might take that rule of thumb of New York.

Mr. Chambers: Mr. Hine did.

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Mr. Hayward: That is the only rule that anybody has ever gotten any degree of satisfaction out of, and not much out of that. I say in this case, if the Master please, reproduction cost when proved undoubtedly the courts have a right to take into consideration; but I think it would be elementary also that where no reproduction cost as of the present day has been proven, that is not a feature or a factor that the original can consider. Am I particularly wrong about that?

The Master: I will not say that, but my mind has been rather firmly fixed on this proposition ever since
47621 I got into this case, and that is without knowing on what theory the value would be proved by the complainant I should hardly want to take reproduction cost in the language of the case, "as of this time," with or without depreciation, as any fair basis of the value of this plant to the consumer at this time.

It seemed to me that that would not be fair to the consumer, and never would have been, to take reproduction cost, using the language of the case, "at this time," as indicating the value to the consumer at this time.

Mr. Hayward: But, of course, you do not have to consider that because there was not any definite effort,
47622 as I felt, to prove it in this case. There was no evidence before you on that; it is one element that you might have taken into consideration if it had been proved. There is no proof, so forget it, what is the use of bothering our heads about it?

The Master: All right, but assuming I have not got proof of reproduction cost now, with or without depreciation, what in your view is the true value to be determined, what value is it?

Mr. Hayward: Of course I will shock you by saying I do not think there is any proof of value in here—that is proof.

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The Master: Assuming there is any proof of value, what is the proof of value I am to arrive at; is it scrap value?

Mr. Hayward: No. It is on some of it, yes, undoubtedly. 14th and 42nd Street, yes.

The Master: Is it the value that it might represent to you or me if we wanted to buy out the Consolidated Company and go into business ourselves? Is it the value that it would represent if the City of New York condemned the 99th Street plant or took it over, or condemned the entire property and took it over to be operated by the City?

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Mr. Hayward: I do not know that those things you are speaking about are ever considered an element in these cases. I certainly do not think it is fair to take what it would cost to reproduce the plant now. If that were true, any time a company wanted a rate case, all they would have to do would be to pick out a period of time when there were peak prices and upset any rate. If there is anything in this case in the way of proof, it is what might be called book value; isn't that so?

The Master: I do not want to answer that that way; but I am going to answer it by asking you a question. Do you say I am entitled to take book value, or investment, book investment?

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Mr. Hayward: It depends on what investment you take. If you mean an alleged investment back in 1884 and $7,000,000 worth of franchises that do not exist, I will say no.

The Master: No, I am eliminating always here in my discussions the franchises; I am talking about what might be termed the tangible property, the mains and the meters and the works and the rest of it. I confess that up to the commencement of this trial I never had occasion to study these questions of value

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Mr. Hayward: If the Master please, the more you had studied up to that time the less you would have known about it; so there was a distinct advantage to you in not having gone into any of these theories of depreciation and reproduction costs. I mean based on my experience with those things.

The Master: All right. Starting in with this case I met at the very outset this question as to the value of this property, as I said, based upon Judge Ransom's theory and his contention it probably is not necessary for me to fix a value. But assuming that an analysis of the figures requires me to fix a value,

47627 I of course had to consider what value. I had been talking very much as my mind was operating: I asked myself, what does this mean when the Supreme Court says "The value"? What value?

The longer I have thought of it the more I have felt the difficulty that the courts have had in disposing of these cases is that it has not occurred to them that it is a value to the consumer, to the public, which must be considered. In other words, that if this company paid twice as much for this property as it is worth to the consumer, the consumer is entitled to the lower figure; that the only true basis, the only accurate basis, the one that eliminates the question of used and

47628 useful pieces of property, the ones that eliminates the question of depreciation, rule of thumb, theoretical or actual or observed depreciation, or anything else—the more I thought of it the more I thought that the one practical and accurate and definite basis, if I could reach a figure on it, would be the value to the consumer of a gas plant and its distributing system.

I have tried to express my views at the expense of criticism by you, and yet I do feel at this time particularly, discussing this case, I ought to present my view to you. I do not know and I am not prepared

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to say that I have the evidence in this case upon which I can base a figure in that way, but I did want to get your views about it.

Mr. Hayward: No, I think you are off on a wrong tangent on that proposition, because it might lead to absurdity. To say what the value of a plant, no matter how much it cost, would be to the consumer in the event of a monopoly and no possible competition, would be one thing. To say what it would be if there were competing lines here to the consumer would be another thing.

The Master: Of course.

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Mr. Hayward: We have here an absolute monopoly, and these are the elements in the case of Smith v. Ames: First, original cost; second, amount expended in permanent improvements; third, amount and market value of bonds and stocks; fourth, the present as compared with the original cost of construction.

That is simply a slant that one court has taken at this thing.

The Master: How does he figure the result? How does he get a result taking those elements into consideration?

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Mr. Hayward: He takes the facts in that particular case, as you have got to in this particular case, and considering these elements from the elements of proof that were offered, arrived at a conclusion in which all those considerations affected his opinion.

The Master: Is there any basis, taking these various elements, on which he can reach a conclusion that can be demonstrated to any degree?

Mr. Hayward: No, I do not think so.

The Master: That is what I am trying to avoid. There is no agreement, there can be no agreement with anybody. It depends upon opinion evidence, it depends on evidence of what it would cost to repro-

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duce, how long it would take to build, and all that sort of thing.

I like, if I can, in any matter that I have disposed of, whether it be this case or some other, to adopt a rule which is subject to some kind of demonstration. In other words a figure that can be worked out logically—some definite basis of calculation. That is what I would like to do if I can.

Mr. Hayward: You never will find it. You are looking for an Utopia that does not exist.

Mr. Chambers: The trouble is the courts have passed on all this question again and again, and able
47633 counsel have submitted all kinds of views. Even Goetz has written on the subject, written a pamphlet on the subject. It is nothing new, it is all settled now, it is the fair value taking into consideration certain things as pointed out in the pioneer case of Smith v. Ames.

The Master: I do not want to get into a discussion with you now, Mr. Chambers; I am hearing Colonel Hayward.

Mr Hayward: I do not care who made the statement, or how many made it, or which side they were on—I don't care. I do not think, for instance, this
47634 statement that it ought to take $4.00 worth of property—wasn't that what somebody said, wasn't that what you kind of had in your head?

The Master: No, Judge Ransom said that. I had not ever thought of a $4.00 figure until Judge Ransom said yesterday, evidently having in mind what I have been indicating right along and what I was trying to drive at, that the proof indicated a figure of $4.00 on that basis.

Mr Hayward: Of course, I think it would be an outrageous rule; it seems to me it would, if a company has or can build a plant to supply the consumers of

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this town gas on a basis of $2.50, that the consumers should pay on a value of $4.00, if it does not exist.

The Master: Of course not.

Mr. Hayward: Then let me follow your value to the consumer, because these men have told you here it would take $4.00 worth of plant per thousand.

The Master: The mere fact that they say so does not prove it.

Mr. Hayward: I am glad to hear you say that.

The Master: They claim that the record shows as far back as 1913 that the delivered thousand cubic feet of gas required, as far back as that, at least $4.00 47636
worth of plant and distributing equipment.

Mr. Hayward: Where?

The Master: In the City of New York, they say.

Mr. Chambers: When did they say it?

The Master: Do not let us get into an examination of that kind.

Mr. Hayward: I am trying to get your point, that is all.

The Master: I take this into consideration—that the Astoria plant was built between certain years, and apparently at an expenditure of a certain sum of money. I have in the record that through the years additional facilities were built in the various works 47637
of this complainant at certain cost. If during the years prior to the war—take a period of 10 or 15 years—the average cost of putting up a plant, the average required, necessary investment for putting up a gas plant with its distributing system was $2.00, then just because things have gone up now I should not say that the consumer ought to pay more than would have been a legitimate and necessary investment in ordinary years.

What I have been trying to figure out was whether

47638 there is not in this record some basis on which I could say that a manufacturing plant with its distributing system represents in value to the consumer under ordinary circumstances and in ordinary years a certain amount of money per thousand cubic feet of gas sold or, if I cannot do that, whether I can take the plants themselves and say that a certain thousand-foot capacity is worth a certain amount of money, and add to that what the evidence may disclose to be the value of a distributing system.

I have not analyzed the figures to say what I think it is, but I am trying to see whether I am not on safer
47639 ground in trying to find that figure than in getting at a result in any other way.

Mr. Hayward: I will take it up a little later, but just to show you how ridiculous that is, on the capacity of Astoria, we will say, figured on what they ought to have done, what their annual make ought to have been proportionate to the capacity, if I am not mistaken it would drop below a dollar and a half, it would get down to pretty nearly a dollar.

The Master: I have not figured it that way.

Mr. Hayward: I think I can show you that.

The Master: I have taken a capacity of 50,000,000 cubic feet, which is apparently all that any witness
47640 says it really ought to do, and have figured it at 230 days, 250 days, 275 days and 300 days, and I do not get any such figure as you get.

Mr. Clark: The capacity is only 50,000,000 at 300.

Mr. Ransom: You are figuring in terms of capacity. For manufacture alone you get a figure, dividing its cost by its capacity, like Woods' figures, of $150 plus—$156 a thousand of capacity.

Mr. Hayward: Of course, it seems to me that this record clearly shows—and we will get at that in a moment—what other plants have done and are doing

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regularly in the City, Astoria ought to do, and 300 is not an excessive figure to take. I do not care what Mr. Woods says. Did he say 75 per cent? Woods said it would be 275. I do not care what Woods said; I say facts are stubborn things, and if there are gas companies in this town who have year in and year out done 300, there is no reason that Astoria should not do it. And they have. They have gone over 300, both on coal gas and water gas. That point I want to take up later in connection with these two plants, 42nd Street and 14th Street.

Of course, the point I wanted to make clear was that reproduction cost at the present time—there 47642
is not a scintilla of proof in this record on it, that I know about, and I do not think you can consider that in arriving at the fair value of this company's property which is devoted to the public use. I might add on that I think we have pretty well concluded that, and I think you and I are of one mind, that seven per cent bonds of this very company are selling at a premium, which is a pretty good argument on the question of return.

The Master: Well, I did not know that.

Mr. Hayward: It is true; seven per cent bonds of this company are now selling at a premium in the open market, after taking off broker's commissions 47643
and everything else.

Mr. Ransom: Not taking off broker's commission. I never have seen those bonds over 101. Maybe they have gone to 101 and a fraction.

Mr. Hayward: Well, at 101 and a fraction they used to be at a premium when I went to school.

Mr. Ransom: But not in a broker's commission house; the most I have seen was 109 or 108.

Mr. Hayward: That fact remains, that seven per cent bonds of this company are selling at a premium

47644 in this town, and it seems to me that is a better thing to go on than anything Mr. Emerson McMillan, however estimable that gentleman may be, seems to think they ought to earn.

As to the question of these little companies, that Mr. Maltbie might have figured a rate of return of seven per cent on, I do not think Mr. Maltbie was far off on that at all for some of those smaller companies. I do not think he would have been off if he said eight. But it seems to me that rate thing is not going to decide the case one way or the other, and it seems to me it was a confession of weakness
47645 on Judge Ransom's part that he had to spend so much time saying they had to have eight per cent at least in this case.

I think our tables have been very fairly made up. I think Dr. Weber was more fair on his Astoria proposition, putting in—yes, $16,000,000.

I think you ought to knock off $4,000,000 of that value just on this question of capacity that they did not go up to. I think it is clear in this record, if the Master please, that there has been another reason, other than the best and the most economical method of making gas that has controlled this company in the use of the Astoria plant; and I think you agree with
47646 me that they have had those old plants on their hands —that Mr. Chambers called the spavined horses this morning—that they had to take care of.

I am not able to follow Judge Ransom on this question of the reserve necessary. Perhaps I am stupid and perhaps he is a wise man. I look at it from the perfectly human viewpoint that a reserve is for one purpose.

Mr. Ransom: There has been a statement made that the bonds were selling at a premium, and this confirms just what I said (indicating to Master).

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For example, yesterday there were three sales reported, one at 100 1/4, one at 100 1/4 and one at 100 1/2.

Mr. Hayward: Judge, is that or is that not at a premium?

Mr. Ransom: It is a premium.

Mr. Hayward: Well, that is all. As to the question of reserve, if the Master please, there is an ulterior motive here for claiming the necessity for so much reserve. Looking at it from a perfectly commonsense viewpoint. What is a reserve for? It is for any extreme that might come. It is for an extreme of weather, for one thing, we will say.

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Suppose you got a very heavy fur coat that you do not trot out but about three or four days in the winter, or at most a week in the winter time. When you put that on, that overcoat on the three coldest days of the year, have you got to have another overcoat hanging up in your closet? Certainly not. That is what you have got that one for. Judge Ransom would have you believe that it was necessary for this company not only to have a reserve sufficient for the most extreme condition that might come up—and we have had them in the years 1917, 1918 and 1919, and the year 1920.

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By their own testimony there was not anything ever heard of like it in this town before; and yet they want to have not only sufficient to take care of that emergency which Mr. Addicks characterized as being previously unheard of in the gas business, in 1917, but they want to have a reserve on a reserve, which it seems to me is wasteful. It seems to me it is not necessary, that it is not good business to have it, and it is not prudence or a desire to protect the public, if the Master please, in my opinion, that makes them keep these other plants. It is the only possible

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excuse they could have for 14th and 42nd Street, that extreme theory of reserve.

I do not want to take up your time, and if I am not right on these figures I would like Judge Ransom to challenge me, that in these extreme times in the last winter and the winter when we were abroad, in 1917-1918—if I am mistaken, Judge, call me down about it—that they never on the most extreme days or the most extreme week in that period made as much gas at 14th Street or 42nd Street, or combined, as the reserve capacity was at Astoria that was not used or was not called on.

47651 Mr. Ransom: Do you want an answer now?

Mr. Hayward: Yes, now.

Mr. Ransom: They made a little over—

Mr. Hayward: I did not ask you the figures. Am I right in the statement that the total that they made in those extremes of weather at 14th Street and 42nd Street was less than the reserve that they had available in Astoria and other plants that they never used?

Mr. Ransom: Your statement is wrong under the evidence.

Mr. Hayward: All right, we will find it.

Mr. Chambers: I do not think it is.

47652 Mr. Hayward: I know it is right.

Mr. Clark: January 5th, 1919, which was the heaviest day of this winter—

The Master: 1919?

Mr. Clark: 1920, rather. The 14th Street plant made 818,000 cubic feet, the 42nd Street plant made 501,000 cubic feet, and the Astoria plant made 47,000,000 cubic feet.

The Master: And what were the other plants? Less than a million each?

Mr. Clark: The first three plants made a good deal more than their maximum.

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The Master: The 42nd Street?

Mr. Clark: No, the 21st Street.

The Master: I mean 14th Street—give me those figures again.

Mr. Clark: 818,000.

The Master: Less than a million?

Mr. Clark: Yes.

The Master: And 42nd Street?

Mr. Clark: 42nd Street, 501,000.

The Master: About half a million?

Mr. Clark: Yes.

The Master: And Astoria altogether about 47,000,000.

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Mr. Clark: 47,000,000.

The Master: Out of a possible fifty?

Mr. Clark: Yes.

The Master: Astoria was within three million of its possible capacity on a given day.

Mr. Clark: But in this whole winter they never made their capacity on any one day.

The Master: You have got to have this in mind, I think, that when you talk of a fifty million capacity plant turning out forty-seven million, you are practically turning out capacity.

Mr. Clark: But you are not, because these other plants go away above capacity, and why could not the Astoria plant?

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Mr. Hayward: Surely, they all go away above capacity, and any plant can that is crowded, and they have told us so.

Mr. Clark: The 42nd and 14th Street plants had been started, but they were not turning out any gas on one day here when the Astoria was turning out 48,000,000.

The Master: What was the highest the Astoria made?

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Mr. Clark: That is the highest, 48,000,000. They could have done it on January 5th if they wanted to. It is the same way about the Mutual plant, they are supposed to be a stand-by plant, and on December 18th when these 14th and 42nd Street plants were not running, the Mutual put out 20,000,000.

The Master: Out of a possible how many?

Mr. Clark: Twenty-four; and on January 5th they fell down to sixteen million out of a possible twenty-four. The Astoria and the Mutual are practically the only plants in the system that never make the capacity. The 59th Street plant goes 25 per cent

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above its capacity for weeks at a time; the 21st Street plant goes 25 per cent or 3,000,000 above its capacity, when its capacity is only twenty-eight.

The Master: 28.5 that they claimed.

Mr. Clark: 28 1/2. Those are the only two plants.

The Master: I have the Colonel's point.

Mr. Hayward: We looked over those figures very carefully; I hunted and hunted and hunted to make sure, and I am just as sure now, notwithstanding what Judge Ransom says, that I am correct about that. Nor would they push a plant if it was not in an extreme day that they describe. Of course they would

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push it. They figured the capacity of all these plants and we did not. They must have figured Astoria's capacity on the same basis as they did the others. When they want to crowd these others they can go way above their maximum, and yet the fact remains that there never has been a time in the periods that Mr. Addicks talked about in 1917 and 1916, or in this winter, when they needed 42nd or 14th Street plants, or used them after the reserve capacities of the other plants were used up, or anywhere near used up. Now, if they did not prove they are useless as reserve plants, then I don't know anything about proof.

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In other words, how absurd and ridiculous and how unfair for them to give the appellation "reserve plants" to 14th and 42nd Street. The Master will not have forgotten the very friendly colloquy that Mr. Woods and I had when he was on the witness stand, and Mr. Addicks, what his testimony was, that it took three or four weeks to get a coal gas plant running. Didn't he testify to that? He said you could take a water gas plant and get it going in 24 hours. That is my recollection of the testimony, and yet these people trot out the 14th and 42nd Street plants which, while they have used them, to be sure, they have never had used in any one of these extreme 47660
days—and using them for reserve coal gas plants, which on the face of it is obviously an unfair thing.

What is the use of talking about a thing that is as plain as this? They have got these old things on their hands.

Now, the Master has got off, I think, on another matter. Suppose these plants are scrapped, there is testimony here that there is a fund of $11,000,000 tucked away somewhere for the purpose of replacing those plants. It is in the record, it is in the evidence, and I can show you where it is, $11,000,000 available for that purpose. That fund has been created year after year. What was it created for if not to do 47661
away with obsolete, useless and expensive old plants? Don't get this idea wrong, and I think the Master was inclined to. Suppose they did take that plant and scrap it, what value will they scrap it at? Not at its present-day value, because the depreciation account, or amortization account, or whatever fanciful name you want to attach to it, was predicated on its old cost when it was cheap, while the salvage value would be on the high prices for scrap today, so that every rule will work, not as they claim, to their disadvantage but in their favor. In other words, they

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will retire it at the old cost, and whatever salvage value there is in it will be at the present high cost, and they have the fund to do it with. If they think it is fair to the consumer to drag these old miserable things along and expect the consumers to pay a return on them of $1,000,000 a day, it is unreasonable, when they have a fund with which to do that, but they won't do it. Of course, the Master may not agree with me, but I can only point these things out. That seems so plain to me that I cannot reach any other conclusion on it.

The Master: I have not reached any conclusion
47663 about the 14th and 42nd Street plants.

Mr. Hayward: If I have said anything about it that stretches the point, or if the figures have been wrong, Judge Ransom can correct me.

Of course, the question of these expenses have been covered. Suppose they do allow the expenses of litigation where the company is successful, there remains the determination yet to be made in this case. I do not think it is a serious matter, and I do not think the Master will think so if it is extended over a period of years, which it should be. I do not think that is going to be one of the controlling elements in the case, and I do not want to take up your time with
47664 discussion.

The Master: I am going to address a question to Major Clark, because he probably has the figures more readily in mind. Astoria is rated at 50,000,000, isn't it?

Mr. Clark: Yes.

The Master: A maximum day?

Mr. Clark: Yes.

The Master: And 21st Street is 28 1/2 million?

Mr. Clark: Yes.

The Master: That is 78 1/2. 99th Street is how much?

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Mr. Clark: 55.

The Master: That is 84. Now, leaving out of consideration other plants owned by other companies, they would be entitled to a reserve capacity on that basis, wouldn't they, they would need additional plant capacity for their maximum day, wouldn't they?

Mr. Clark: Surely.

The Master: Where do you say they should get it? The testimony is that they ran up to 98, I think on one day, for their own requirements.

Mr. Ransom: 99.

The Master: I am asking Major Clark where he says they should have taken it from.

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Mr. Clark: They claim they took it from the Mutual.

The Master: That would be 94.

Mr. Clark: The Mutual will be 24.

The Master: No, they say they have about 10,000,000 cubic feet capacity that they use.

Mr. Ransom: It is a little over 10,000,000 that the Consolidated has a right to use.

Mr. Chambers: The New Amsterdam has 36,000,000.

The Master: How much do they sell to their own consumers?

Mr. Clark: They don't go up to their capacity there, very seldom, only once this winter.

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Mr. Ransom: The New Amsterdam's own requirements, that is.

Mr. Clark: They sell some gas to the Consolidated.

Mr. Ransom: The requirements of the Central Union and the Northern Union take up all the surplus plant capacity of the New Amsterdam over the requirements of the New Amsterdam East River consumers.

Mr. Clark: Why is it that they never go up to capacity?

47668 Mr. Ransom: Because you cannot run plants over any period of time up to capacity.

Mr. Clark: You do some, but you don't others. Our contention is if they have not plants they should have it at Astoria.

The Master: Of course, I have a question there as to how far I can require them to go into other plants that they own or control in making up their requirements.

Mr Clark: If they have not gone into these, they certainly should have built plants at Astoria in the old days when they could have built them cheap.

47669 The Master: I just wanted to get these figures in my mind.

Mr Chambers: They are all found on Table XX-132.

Mr. Hayward: There is just one more point that I want to make: It is not necessary for me to challenge the good faith of this company. I do not make any accusations. If the figures accuse them that is not my fault. The point I want to make is on this proposition of either their desire to buy gas oil—and I do not care whether Mr. Rockefeller was in both companies or not, it doesn't make a bit of difference to me, nor do I think they should have been
47670 penalized for that connection, I will say that they, should have bought oil just as cheap as the other companies. Now, I contend that either they have artificially stimulated the use of gas oil, or that they have shown a stupidity in the management of their business that their appearance here before us during all these months would not lead us to believe they have.

I refer to the respective manufacture of coal gas and oil gas. I think it has been brought out very clearly by their own testimony that there is a colored gentleman in this woodpile somewhere.

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The Master: You mean in the coal pile?

Mr. Hayward: In the coal pile, and not in the wood pile. It is probably in the oil tank instead of the coal pile. The company has continued, it seems to me, willfully, to increase their manufacture of water gas notwithstanding the rate of increase of water gas over the rate of increase of coal gas. Do I make myself clear on that? I put it rather awkwardly.

The Master: Yes, I get your point.

Mr. Hayward: I have some figures on that compiled for 1916, 1917 and 1918, simply a working sheet here.

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The Master: But you do not overlook their contention in that regard, do you, that they could not depend on the coal supply?

Mr. Ransom: Coal gas is costing more.

Mr. Hayward: I have not overlooked that, and I have not overlooked their contention that they could not sell the coke, and I coupled up with that the fact that every year they were buying coke, and paying more for it than they would allow the public as a credit for that residual.

Now, on this Astoria plant I have some figures here. It is the maximum coal gas output for 1914. I have got the coal gas make, I have got the amount made below the coal gas maximum; I have got the difference in price for making coal gas and water gas, to show how much cheaper it would have been during those years 1916, 1917 and 1918, to have made coal gas than water gas, and these figures show, if the Master please, that in 1916, if they had increased their coal gas manufacture they would have saved over $25,000. In 1917, the difference between the water gas cost and the coal gas cost was so great, that if they had made anywhere near their capacity of coal gas they would have saved $223,220. In 1918, if they

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47674 had not artificially diverted this business to water gas, as I contend the figures show, they would have made $177,730 more than they did.

Now, those are big figures to be taken into account in determining this case. Why? I do not think that the Master is stupid enough to believe that they could not sell coke when they were buying coke. I do not think there has been any legitimate or plausible or reasonable excuse offered here for artificially stimulating the manufacture of water gas, and artificially stimulating the market for gas oil, in view of the figures. The public had right to expect these
47675 gentlemen to make gas as economically as they could, as long as a rate was going to be predicated on it, and they didn't do it, and you cannot get in this whole record, any excuse or any reason to show why they sacrificed $177,000, and $223,000 for a theory which would benefit somebody beside the Consolidated Gas Company or the consumers of gas in New York.

I think we covered the question of franchises this morning fairly well. Judge Ransom objects to that. I have here that permit or franchise or grant, or whatever you wish to call it, that I referred to this morning. It is simply confirmatory, of course, of what I said. I refer to this grant to the Anthracite Com-
47676 pany for a period of fifty years. Those dates confused me. It was simply confirmatory, the word, "assigns" or something like that, were added. The expiration of the date of that franchise was not affected. That is in evidence, offered in the same manner that it was offered in the other case. This is the one that was still in force at the time Judge Hough considered this before.

The Master: Through whom did this franchise come, which company got that?

Mr. Clark: The Knickerbocker.

Mr. Ransom: The citizens and then the Knickerbocker, as I recall it.

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Mr. Hayward: Of course, that seems to me to be pretty conclusive on that branch of it. Now, just a word—the Master will remember the difference that came up about this three cents or three and a half cents for replacement, or whatever it was that Mr. Woods said was three and a half cents, and they had been reporting three, and I think Mr. Teele fixed it at 3.33. I still insist that it would be ridiculous to take any higher rate than they on expert opinion decided was sufficient, and have so reported all these years to the Commission.

The Master: Is it your understanding that an ordinary, up-to-date plant in good condition ought not 47678
to show more than three cents per thousand for renewals and replacements?

Mr. Hayward: On that I do not claim to be an expert. I can only take the fact that basing it on their own experience that they did report to the public authorities that that was sufficient, that they did make that allowance of three cents, and the Astoria actual figures showed 2 1/2 cents, which is lower, of course, than 3 cents.

The Master: Is that correct, Judge Ransom?

Mr. Ransom: That is plant alone. I think this 2 1/2-cent statement on plant alone for Astoria is high. 47679

The Master: How about that, Major Clark?

Mr. Clark: Over a number of years it was 2 1/2 cents.

The Master: For plant alone?

Mr. Clark: They haven't many mains.

The Master: What difference will it make if I take a complete system, manufacturing and mains?

Mr. Clark: The best proof on that is that they still have a surplus in that fund from the 3 cents.

The Master: Who have?

Mr. Clark: The Consolidated.

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Mr. Hayward: They said it was enough, and it has been enough, but I would not attempt to say about it. This fund is created not by something new, it is created by the company taking an old thing that was in use that would come out, on the old value, and whatever new they buy is charged to capital account at its actual present cost value.

The Master: I thought we were discussing something other than capital account. We are talking about operating account now, aren't we? What I want to determine, if I can, is what an ordinary up-to-date, not an obsolete or wretched old plant, but a good
47681 operating plant ought to require, including its mains and distributing system, in the shape of renewals and replacements, such as taking out an old pipe and putting in a new pipe.

Mr. Clark: Putting in a new pipe comes under an entirely different classification.

Mr. Ransom: The new goes into the capital account.

The Master: I am talking about the particular things that go under renewals and replacements that go to operating expense.

Mr. Clark: They set up the 3 cents to take care of the capital account that is retired, so that their
47682 capital is kept unimpaired. What is bought new is put into the capital account. It is one of the additions that Teele puts in in his schedule.

Mr. Ransom: And the loss is charged against this fund.

The Master: But the operating statements I have included an item of several cents per thousand for renewals and replacements. That could not be a capital account.

Mr. Clark: No, but it is to make up for the loss in the capital account. That is the only charge to make up the loss in the capital account.

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Mr. Ransom: The loss on property withdrawn from service.

Mr. Hayward: Suppose the 14th and the 42nd Street plants were not excess baggage entirely, and suppose it was not without usefulness, and when they were put out of business they had to be reproduced somewhere else, if they built a new plant at Astoria, we will say, or an addition to Astoria to take the place of those plants, the present high cost would not affect our situation, because the 14th and 42nd Street plants would be retired at their old cost out of this fund.

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Now, at the expense of inflicting myself on the Master about this candle power thing, there are two things that I want to call to your attention in spite of the statement you made this morning. I never was more in disagreement with anybody in my life than on this theory that you have taken in this case. It is unfair to the public, it is artificially shielding this company for things that were reprehensible which it is far beyond what lies in your power to do. You are not counsel for this company and you do not have to find excuses for them. The law is plain, and you did not make it nor did I make it.

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I want to put in here what you said we might put in on argument, tabulations showing the number of daily violations in candle power as found by the Department of Water Supply, Gas & Electricity at the 79th Street station.

In 1916:	
January,	83
February,	70
March,	58
April,	39
May,	32
June,	52

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July,	37
August,	42
September,	70
October,	84
November,	73
December,	52
	682

There were 682 violations of the law during 1916.

In 1917:

January,	73
February,	53
March,	45
April,	31
May,	31
June,	88
July,	58
August,	103
September,	69
October,	44
November,	119
December,	101
	815

47687

47688 There were 815 violations in that year.

1918:

January,	240
February,	208
March,	157
April,	129
May,	151
June,	221
July,	260
August,	263
September,	230

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October, 260
November, 222
December, 188

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Now, I pause to let Judge Ransom say that that included the toluol period.

Mr. Ransom: That includes all companies. That is not merely the Consolidated.

The Master: It is anybody's gas.

Mr. Hayward: That is what we are paying for when we pay our little old eighty cents.

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The Master: When you say some two hundred and odd in January how is that figured?

Mr. Hayward: That is the violations, the total of that month.

The Master: How many tests a day?

Mr. Hayward: Mr. Clark says 10 tests a day.

Mr. Ransom: It is 1 test a day in the case of 10 different risers.

The Master: Yes, see if I have this right. There were 5 risers at each station tested once a day.

Mr. Ransom: Not all of them Consolidated.

The Master: There are five risers at each station, and three of them are marked Consolidated, one marked Standard and one Mutual, isn't that so?

47691

Mr. Clark: At the Bowery. At 79th Street there are three of the Consolidated, one Standard and one New Amsterdam.

The Master: Then what you have been reading, Colonel Hayward, is the number of violations purported by the City test man from these ten lines or risers each day during the month?

Mr. Hayward: Yes. There were 2,529 during 1918. I looked up to see when this famous toluol extraction process, which is a cloak to cover all these sins, started. It started on the 30th of July

47692 The Master: One of them was in April.

Mr. Hayward: All right, take the portion of the year prior to the time they started to take the toluol out, and the average violations run nearly as much as afterwards I have in my hand Judge Ransom's brief, page 180, showing continued violations in 1918, before the toluol period started, and, of course, at the 99th Street station they did not start until the 30th of July.

Of course, I do not want to yield this point to the Master, and I think I have made myself clear on that heretofore, that with that contract, voluntarily en-
47693 tered into between the government and this company, we have testimony that this company could have, notwithstanding the extraction of the toluol, continued to serve the people with 22 candle power gas, and that will not be seriously disputed, with a provision in the contract that the government would pay the extra cost of doing that. I contend that neither as an ethical proposition or a legal one were they excused from doing this when under a commandeering proposition, which did not occur at all, they had it in their power, if they had done all they could, to furnish the people with 22 candle power gas even during that period.

I have here during 1918, a record of 808 violations,
47694 and how the Master can say that that was a reasonable or a fair compliance I am unable to imagine. I never was so astonished in my life as at this slant you took on a thing of this kind. If your office boy was late morning after morning during the month it would not be because his grandmother had died every morning, you would kick him out.

The Master: Colonel, I had a girl in my office who lived up in the Bronx, and every time I criticized her for being late she was able to prove to me that she had left her house at eight o'clock, which, under ordinary running conditions of railroad facilities

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would bring her down at nine. She would prove that to me, and I would throw up my hands.

Mr. Hayward: It depended entirely on the contract you made with her.

The Master: My contract was that she was to be at the office at nine o'clock, but she never got there.

Mr. Hayward: She might have started at ten minutes to eight, like some of us did during the progress of this case.

The Master: I insisted at one time she start ten minutes earlier, and then the railroad facilities got worse.

Mr. Hayward: I think there is a very clear record 47696
here of violations of the law by this company, covering such a long period of time that it must have been wilful, when they were cutting their cloth too close, and you cannot cover it by taking out any period and showing an average of 22 candle power or better, that is not the point at all, that is not what the law said, nor can you take the station tests, which is now what the law says. I still repeat that we are bound to obey that law, not having made it, but nevertheless coming under its operation, and that the direct contrary has been shown by the record in this case as to the facts regarding their compliance with the law. I think you are absolutely wrong. We have proven 47697
beyond all reasonable doubt that this company has been a repeated continuous and chronic violator of that law.

Now, just one more word. I have talked longer than I had intended to. My little memorandum covers the tables we have put in here on which we rely and the prices at which we arrive at the various values. I have told in more detail than I expected here that we think some of the property of this company should be eliminated.

One word in closing: I take issue with Judge Ran-

47698 som seriously on the proposition that we have heckled his witnesses, and that the witnesses he has brought here have been abused by counsel on this side, the poor dears, etc., and I draw your Honor's attention to the great financial men that came up here under a subpoena that was issued by our friend John O'Brien, and the City officials that came here under a subpoena that Judge Ransom sent out, the comparison in the mind of this case, these men that left their little vacations up in the Adirondack Mountains and came here and sat day after day in the Woolworth Building at the whim of Judge Ransom, compared to the way
47699 he clucked like an old hen when a Mr. Baker, or somebody from a bank came up and waited five minutes. You would have thought he was the guardian for the whole of Wall Street. What his purpose was I don't know, but I think they were probably laughing at him, I know we were.

Now, there has not a witness of ours gone on the stand that Judge Ransom has not attempted in every manner of means to belittle and insult. There is not a witness that has gone on the stand for us that has not had some little remark passed which would attempt to prejudice the Master's mind against him, so the shoe as to that is on the other foot. I don't care anything
47700 about any of them except poor old crippled Edgerton. I have known him a long, long time, and I remember the howls of laughter that went up from Judge Ransom, and Mr. Carter and Mr. Teele, and Mr. Vilas, and the other gentlemen when it came out that in the first year of the Civil War he did not answer Abraham Lincoln's call for volunteers, but went away; and I suppose, if the Master please, that the reason they felt themselves privileged to laugh at that poor old man and our other witnesses was because of the splendid response that they had made to President McKinley's call in 1898, and President Wilson's call in 1916

and 1917. They have abused every witness that we have had. There has not been a fair attitude on the part of this complainant company toward one counsel or one witness in this case. I would not have mentioned it had he not raised the question first. 47701

I want to say to the Master in closing that I feel sure what your opinion will be in this case, it has been so plainly indicated. I also want to say that I feel that no Court in this land will sustain a verdict against these defendants in favor of this complainant company on any proof that has been offered here. There isn't any proof that can sustain such a verdict. Somewhere sometime in this case during its appeal we are going to strike a Court who is going to look at this record, and see the abominable things that have been done to the defendants in this case, the unfair things, the unfair rulings of the Court, I make a final appeal to the sense of fairness of the Master, in asking him to look through the record, and to give our poor little brief as much consideration as you do the other, and in the absence of all this heckling of each other back and forth in this absurd proceeding that has taken fifteen volumes, and I think you will come to the conclusion that I have come to, that whatever may be the facts in this case, no case whatever has been established by the complainant showing that this statute, so long in existence, should be ruthlessly put aside during an extraordinary period that will never be repeated in the history of our country. 47702 47703

Mr. Chambers: If the Master please, you put to me a pointed question in regard to vouchers relating to coal contracts, and just for the moment I did not remember exactly what took place. I now remember. I said the vouchers were no evidence of prices. I am backed up by the records. At page 6812 of the printed record Mr. O'Brien had offered in evidence some coal vouchers, and he said:

47704 "I will offer in evidence the coal vouchers for the 59th Street station. Your Honor is not going to permit me to ask the witness any questions unless I state that I can point out errors in the calculation?"

The papers were received in evidence and marked Defendants' Exhibit AA-20.

Then Mr. O'Brien said:

"Your Honor is accepting them as invoices that the witness says he made his tabulations from?

"The Master: That is all.

"Mr. O'Brien: Not to bind us by the figures shown therein?

47705 "The Master: That is right. Now, do you want to offer any other coal vouchers?"

Then Mr. O'Brien offered some more, and then Mr. O'Brien said:

"These are received with the same limitations?

"The Master: All with the same limitations.

"Mr. Ransom: Just what is that limitation?

"The Master: They are being marked practically to identify the vouchers, that is all.

"Mr. Ransom: The defendants by putting them in do not bind themselves by them?

"The Master: No.

"Mr. Ransom: The fact that they are offered by the
47706 defendants rather than by the complainant does not alter their probative value that they would otherwise have?

"The Master: They haven't any probative value except that they are the vouchers upon which entries were made."

The Master: What about it?

Mr. Chambers: You said it had no probative value, they were only offered to check Teele on his cross-examination.

The Master: Precisely.

Mr. Chambers: I said this morning they were no

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evidence of the prices and value and that bears me out.

The Master: Value?

Mr. Chambers: Or price paid.

The Master: Of course it is evidence of the price paid.

Mr. Chambers: I have read the record. You can change your ruling of course if you want to.

The Master: Now, Judge Ransom, I will hear you.

Mr. Ransom: On this question brought up by Col. Hayward as to the state of the record as to the proof of present value of the complainant's property, your Honor will recall that the complainant did not upon 47708
its direct case offer proof of its book cost or book investment in its property. It made its case, so far as value of property was concerned, upon what the complainant regarded then and regards now, for the purposes of this case, as a sound index to the minimum fair value of the property of this company for the purposes of this case; and under decisions which have taken place since we offered that proof and stood upon that proof, we are confirmed in that view, to which I shall presently refer.

We offered as to land, proof of the assessed valuation. We offered the proof of the deputy tax commissioners of the city, qualified, as the defendants 47709
cannot deny, to place a value and express an opinion as to what this property would sell for under ordinary circumstances if wholly unimproved. We offered that as to land as showing a minimum present value of land for the purposes of this case.

As to the plant and other property used in the manufacture and distribution of gas, what we offered was this: We showed the appraisal made on the cost of reproduction basis by Mayer and Simpson in 1906; we showed the property which made up those appraisals; we showed the unit prices used by Mayer and

47710 Simpson in those appraisals; we showed the amount of units of that property appraised by Messrs. Mayer and Simpson in 1906, which has since been withdrawn and is no longer in existence; we showed the additions to that property since the time of the Mayer-Simpson appraisal, and the cost to the company of those additions since 1906.

Now, we stood upon that proof then and we stand upon that proof now. We think that method was a sound method to be followed for the purposes of this case, and in that connection I want to refer to your Honor to just one or two things which you may not
47711 have thought of as bearing upon the soundness of that method. It is not a new or a unique method. For example, the railroad valuation of this country for the future, under the Railroad Valuation Act, is made upon this basis, that there shall be made a valuation, a present valuation of the property used by the railroad common carriers of the country, and then for future rate cases before the Interstate Commerce Commission and in the courts, the basis of value, after the present valuation has been completed, will be the valuation reached by the Commission, as reviewed by the Courts, plus additions and less withdrawals. In other words, the starting point will be the valuation with additions
47712 less withdrawals. Now, that is the method followed by Justice Hughes in the Brooklyn Borough case. The Commission had made a valuation which gave us this figure of $4.85 for plant and equipment, to which I referred yesterday. Justice Hughes as a basis of his valuation in that case took the Commission valuation, plus additions and less withdrawals.

I said there had been decisions which confirmed the view which we expressed as to land and other property, present value being the basis. Since the taking of testimony in this case closed the Supreme Court of the United States had before it a case which came up

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on mandamus involving the question as to whether, for the purposes of valuation being made by the Interstate Commerce Commission through its advisory board, this Maltbie-Bemis theory of original cost should be followed, or whether present reproduction should be taken. The Commission, on the advice of the advisory board, of whom Messrs. Maltbie and Bemis were a majority, as has been shown by the testimony in this case, they making up two or three members of the board, had determined on the other method, the amount of original cost, which they have worked out in this case; and upon their advice the Commission ruled against proof of present-day pro- 47714
duction value, or proof of what was called value of similar and adjacent land at the present time, including also the cost of acquisition and severance damages, as in condemnation, and the Supreme Court of the United States reversed the rulings of the Interstate Commerce Commission, and reiterated the present value basis; and as to land we come right back reinforced in what I have said before your Honor, that as to land certainly there cannot be any possible doubt that the index of values for the purposes of a rate case is its present value.

Now, I referred to this Mayer and Simpson appraisal. What did we do further? Having shown 47715
the property, having shown the units appaised by them in 1906, and having shown the unit prices which they applied to those units; and having shown how much of that original property is now in existence and used, we showed the difference, the increase in the unit prices, showing the present reproduction cost of that property applying present unit prices to so much of the Mayer-Simpson appraisal as is still in existence, and use; and the reproduction value now would be very much more than it was then.

We say upon that basis that for the purposes of

47716 this case the present value of this plant and equipment is at least—whereas, in fact it is much more under the testimony when you compare the unit prices of the two dates—is at least the amount at which they appraised that property in 1906, part of which is still in existence and in use, plus the actual cost of additions since that time, less withdrawals.

In that connection, although it does not bear immediately upon this point, I call your attention on this matter of more than $4.05 per thousand for plant and equipment to the fact that the figure in 1906 for plant and equipment, and the other properties used in the
47717 manufacture and distribution of gas as of that time, divided by the number of sales shown in the record at that time as 13,283,163,000 plus, gives a figure of substantially more than $4 a thousand. We did prove by way of rebuttal of their proof the entire investment of this company in property which is used. To a degree that investment offers a basis, a factor that you may take into account in determining a present value of the property used in the service of these consumers. But, whatever index or present value, whatever factors you take into account, I don't know of any way, as I said yesterday, in which you can reach a figure of less than the figure of $4.05 per thousand which is
47718 shown by the property of this company.

Colonel Hayward referred to the matter of the way in which this proof had been presented so far as our failure to do what he says should have been done is concerned, namely, to take the vouchers, the underlying records which show the income and the outgo, and make up tabulations from that instead of tabulations from the books.

Now, I call your Honor's attention to two things in that respect. In the first place, while Teele did tabulate the books, he to an equal extent tabulated the vouchers. These Teele exhibits have just the same

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force and effect and validity as tabulations of vouchers and underlying records as they have of tabulations of books. But beyond that, supposing you took all of this great mass of underlying data, all these vouchers, and suppose that we had started in on the first of January, 1919, to have made up a complete tabulation in full detail, with the classifications prescribed by the uniform system of accounts of the Public Service Commission, and had tabulated all these vouchers in that full detail, and all these underlying records in that full detail, what would we have produced or reproduced? We would have reproduced the books of this company which are in evi- 47720
dence. The books which are in evidence are a tabulation of these vouchers and underlying records in full detail, and with the classification prescribed by the Public Service Commission. I do not know of any way in which tabulations could have been made up from the vouchers in similar detail in any better or more complete or accurate form than is embodied in the books themselves, the Teele exhibit being a somewhat more condensed tabulation of these same matters.

Reference has been made by Colonel Hayward to the quantities of coal gas and water gas made, and he gave certain figures showing the cost of coal and water gas at Astoria in 1916, 1917 and 1918, as I recall it, 47721
but he did not tell you that those figures with respect to the cost of water gas included the cost of enriching the coal gas, insofar as coal gas enriched at Astoria.

Mr. Hayward: That is untrue.

Mr. Ransom: I will give your Honor the figures on that point. The coal gas at Astoria is in part enriched, as your Honor will recall from the record, by the candle power of the water gas manufactured at Astoria. Your Honor has in mind no doubt the more recent figures to which I referred yesterday showing that the cost of coal gas has been increasing very much

47722 more rapidly, several times more rapidly than the cost of water gas, so that at the present time beyond all peradventure of doubt, in 1919, as of October, at the time Mr. Woods testified, you would have had an increased cost if you had made more coal gas, assuming that you could have gotten the coal. The figures on that are, as they have been put in this case, that during the past five years this company could not get more than 60 per cent of the coal which it had contracted for in order to make coal gas which it desired to make; and that at times during the winter of 1919-1920, as at other times before that, there had
47723 to be a curtailment of the coal gas which otherwise would have been made, because they could not get coal.

Mr. Hayward: Just a minute. I did not object to your correcting me sometimes. Judge Ransom is absolutely wrong. The figures that I gave about this did make new allowance for all those matters of enriching the coal gas. It was carefully figured out, and I am absolutely sure of those figures. Also, the record does not bear Judge Ransom out in his proposition of not being able to buy coal. They sold 21,000 tons of coal to the Edison Company at one time.

Mr. Ransom: Not gas coal. I was referring to gas coal.

47724 Mr. Hayward: It was from the 14th and 42nd Street plants. I don't know what it was doing at those plants if it was not for gas purposes.

Mr. Ransom: Mr. O'Brien referred this morning to a claim that the Standard Oil Company of New Jersey had some complete monopoly of the gas oil market in New York City. The facts are, as shown by Exhibit 487, that during the past ten years the Standard Oil Company of New Jersey sold about one-half, a little more than one-half of the oil delivered to gas companies in the City of New York, that is the entire quantity delivered, not only to the Consolidated,

but to all of the Consolidated system was just over one-half of the gas oil delivered in New York City. 47725

The Master: I think he meant to include the Standard Oil Company of New Jersey and New York.

Mr. Ransom: Then if that should be done there would have been three or four companies in the City of New York which had been getting quantities of gas oil, shown by Exhibit 487, from companies other than the Standard Oil of New Jersey or the Standard Oil of New York. Mr. O'Brien referred this morning to the matter of cast iron pipe, and the obtaining of same of the cast iron pipe company with which Mr. Brady is connected; but the proof in the case shows, 47726
and it is shown by the testimony of members of the Executive Committee, as well as by the testimony of Mr. Brundage and Mr. Gawtry, that there has been no cast iron pipe bought except by competitive bids, and that the instances in which this cast iron pipe company with which Mr. Brady is to some degree connected obtained the contracts, it was only in such instances as that company was the lowest bidder.

Mr. O'Brien referred to the 99th Street manufacturing book which he placed in evidence, and to the error which appeared therein as of May, 1919. With all this examination of the books that has gone on for a year now, or nearly a year, that is the only error 47727
they found, and that was an error which the Consolidated Company's own accounting system detected at the time and corrected.

Mr. Chambers: Teele found some errors.

Mr. Ransom: It was an error which if it had not been corrected and detected, would not have affected the accuracy of the books and the accuracy of the Teele exhibits; but error, as it was, this incident is confirmation, because it shows that even though it is impossible to entirely eliminate from a great organization the effect of occasional stupidity or blundering

on the part of a works clerk, there is in this accounting system, within itself, that continuing check which promptly detects errors and promptly corrects errors. The fact that this clerk reversed his figures, carrying over from April and started May with the wrong quantities in the wrong place, so far as gas oil was concerned, and the fact that it was promptly detected and corrected, is a demonstration of the soundness and the accuracy of this accounting system and not in any way an impairment of it. They have not found any errors which the system of accounts and the checking of accounts maintained by this company did not detect at the time, and did not correct at the time.

Mr. O'Brien referred to the matter of rates of pay. The wages paid are in evidence. The pay rolls were placed in evidence by the defendants, the amount paid for labor on account of the various departments of this company, manufacturing department, for example, are shown in the defendants' exhibits, and in the complainant's exhibits alike, and there is no contradiction in this case of the rates of pay. Mr. Little said that the company had been paying for labor less than it should, it was going to have to pay more, and that present rates of pay came up nearly to the rates of pay which would ordinarily be expected in this territory at this time.

With respect to the matter of quantities and prices of materials, I call your Honor's attention to just one thing further. There was in this case at one time a gentleman who, as Mr. O'Brien said, knew a great deal about the price of materials and about the quantities used in the manufacture of gas, and during the early stages of the case Mr. Polk was in court day by day, and he was at Mr. O'Brien's elbow, and at the elbows of other counsel for the defendants during the cross-examination of witnesses. But, when Mr. Woods put in his figures showing the quantities, showing the

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prices, and we put in the vouchers which showed the prices, Mr. Pope, who would have been the best qualified man, that the defendants showed any indication of presenting with respect to the cost of material and with respect to the quantities of material, disappeared from the case, and he not only was not called to the stand, but to my great regret they did not even leave him around the court room where complainant's counsel could have called him to the stand. The defendants did not produce a single witness who testified either to lower prices or to lower quantities.

Now, just one word further on this real estate of corporation tax, because it is a point that I did not refer to in my memorandum. They say it is a duplication. It is a duplication in what event? It is a duplication, the company believes it should be able to maintain in court that it is a duplication in the proceeding which it has pending to contest that item, if and when the franchise tax is paid. The company not only admits, but contends that with the franchise tax paid, this should not be, but if the franchise tax to any extent is not paid, then to that extent we are caught on the other end, and the defendants here are in the generous position of proposing with one hand to throw out the franchise tax, and with the other to throw out the real estate of corporations tax.

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Now, on the matter of interest, your Honor will examine the statute, you are familiar with it, and with the proofs of the case. The Department of Taxes, Commissioner Saxe, or nobody else, has power to waive interest on franchise taxes when paid. The only interest which is ever waived is when, through litigation or otherwise, some part of the franchise tax, as was the case in the earlier years, is not paid. Then under those circumstances, with the tax eliminated to that extent, interest goes with it to that extent.

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They referred to the fact that your Honor did not

47734 have details before you with respect to the way in which the various taxes were made up, gross earnings, personal taxes, and so on. Exhibit 375 is the personal tax voucher, to which is annexed the return. The return is in fact a part of it, showing the basis of that apportionment. Voucher 18265 is the gross earnings tax of 1918, with the full details, the return. The cross-examination of the witness Howard upon those matters developed every fact, I believe, essential to this determination, and the various tax vouchers are in evidence.

Reference has been made to the difference in the
47735 method pursued by Mr. Maltbie in making up his so-called statement of original cost and the method pursued by Mr. Carter, so far as assessments were concerned. It was endeavored to make it appear that those two methods were identical. As a matter of fact they were not. Mr. Carter followed the method followed by the City, instead of following the area basis. That is if it is an assessment for something which runs along a property, like a sewer, or in connection with sidewalks, something of that sort, curbing or grading, why then, of course the City follows a front foot basis, as I understand it. If it is an assessment for some improvement in the assessment district, not
47736 an assessment for something in immediate proximity to the property, and extending along it or around it, why, then the area basis is followed. We used the basis followed by the City, while Mr. Maltbie used a gross area basis regardless of the proper method to be applied to such a situation.

So far as this claim on the part of Colonel Hayward with respect to a reserve or surplus for such purposes as he is described is concerned, I have gone into that very thoroughly in my memorandum, and I will not go into it here. He brought up this shop worn claim that the 14th and 42nd Street plants are not of any use.

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Mr. Hayward: It is the plants that are shop worn.

Mr. Ransom: That they are not any use for winter reserve because it takes time to fire them up. That has been made perfectly clear in this case, I trust. It does take time, but what the company does is to fire up those plants in time, and then generate gas in them to the extent to which it is needed. If conditions in a particular place, Astoria or other plants, or the demand at a particular time calls for more gas than they can make elsewhere, why, they run up the quantity of gas which they make in those plants. In other words, it runs along in the winter less than the full capacity of the plant, but it went up over 8,000,000, 47738
it was commonly over 3,000,000 and it was used to the extent that was required. I have gone into this phase of the matter somewhat in my memorandum, so that I will not go into it further here.

With respect to the matter of the return from 1906 to 1919, the facts as to that are shown in our exhibit in which that return is computed, figured both upon the investment cost of the company's property used in its business, and also another exhibit figured upon the proof of present value which we put in as exemplified by the appraisals of Mayer, Simpson and Preiss brought down to date with additions less withdrawals.

I just want to bring back one question in our proof 47739
that was stressed greatly by Mr. Chambers, and that is not referred to in the memorandum, and I will refer to it here. That was with respect to this blanket claim which was filed by the company against the United States Government under the toluol contract. Your Honor will recall what the proof showed in that respect, that after the period of the toluol operation by the United States Army officers had ceased, and after a settlement had been made under the contract, there was asserted by the City of New York a claim that because the gas supplied to the City of New York as

47740 a consumer during the period of toluol operation by the War Department had been below 22 candle power that there should be a substantial reduction from the price which the City would pay to the company for the gas supplied to it at the 75-cent rate fixed by the 1906 statute, the statute not here under review. The proof shows that upon the suggestion of the War Department, in view of the fact that this claim had been made, there was filed a blanket claim, not in definite amount, against the United States War Department, as a safeguard to insure indemnification of the company in the event, quite improbable, cer-
47741 tainly quite improbable after the report of these candle power tests and the way they were made as developed in this case, but in the event that the City obtained a reduction from the price which the City would otherwise pay for the gas sold to it as a consumer, the company was to keep its right open, so that in that event, if there was a right of recovery, if there was a recovery, a deduction by the City on that account, the company would be indemnified by the United States Government. The company does not believe, as Mr. Addicks said, that there was any likelihood of such a deduction being established by the City, that the gas which the consumers got during that period was just
47742 as good for their purposes, as was shown by the fact that no more was used by the City in City institutions, where presumably the use made of gas is substantially uniform, they did not have to use more during that period in order to obtain substantially similar results, just as the company in the use which it makes of its gas in various of its own buildings, found that during that period the gas with the reduced candle power, but without any appreciable reduction in the number of British thermal units, the company did not have to use any more gas to obtain substantially similar results.

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Now, just a word further with respect to the tabulations in connection with Mr. Hayward's brief, that tabulation being one which has been referred to by various counsel in the case. The number of eliminations from expenses and additions of a theoretical or hypothetical sort on revenue are amazing and unwarranted. For example, they have added on $38,500,000 for revenue for the General Office Building representing space used by the company for welfare purposes and the like, which they say the company should have rented and obtained a large rental therefrom. They have eliminated all production expense, and all expense of maintaining the 14th and 42nd Street plants 47744
as reserve plants. They have deducted the interest on the Astoria investment, the payment to the New York Mutual for the use of its plant, for the maintenance of tunnels used in bringing Astoria gas over to the City, they have taken over $1,900,000 in that respect. They throw out $150,000 on repairs, mains, and services; $300,000 on repairs, meters and appliances; half a million dollars more on the General Office salaries. They substitute 3 cents per thousand cubic feet for the actual requirements on renewals and replacements. They cut down taxes in the manner which has appeared in Exhibit AA-451 in the testimony in the case in relation thereto. They have reduced unaccounted 47745
for gas to 4%, with the consequent effect running into hundreds of thousands of dollars. They have made on Table 1, Item 2, a statement contrary to the facts in this case, claiming that unusual discounts are not credited to operations, and therefore should be deducted, whereas the practice of the company has always been to credit discounts in the undistributed adjustment of the operating expenses. They threw out in Item 4 excess dividend taxes of the Astoria Company.

They threw out the so-called rent—I think I have

47746 referred to that; and as far as oil goes, the cost of oil, they have made up figures on the basis that oil ought to have cost only about one-half of what it cost, and consequently they put in oil instead of the price actually paid, in excess of six cents, they put it in at approximately three cents.

Mr. Chambers: That is not the fact at all. Down at the bottom he says that if they could get oil three cents cheaper it would show up so much better.

Mr. Ransom: They claim, so far as Astoria is concerned, they have reduced that to a basis of 300 days capacity which they claim makes a difference of over
47747 $4,000,000 in the last three years.

Mr. Hayward: That is just what I objected to Dr. Weber not doing. He left it at $16,000,000, and I said based on the testimony it should have been cut down to $12,000,000.

Mr. Ransom: I think your Honor will find these things in the record and in the exhibits and in the proof and the tabulation which has been made up in connection therewith.

On this point brought up this morning with respect to the situation as to the possible effect of the claimed expiration of the permit to the Anthracite Company, I do not know that I care to go into that at great
47748 length at this time. I do not believe anything has taken place in that respect which has an effect upon the status of this company as in the possession of perpetual franchises. There have been a number of adjudications on that point, some of them with respect to franchises similar to those which the complainant has, outside of this permit to the Anthracite Company. For example, there was the decision of Justice Delehanty recently in the Central Union Gas Company case, where Judge Delehanty passed upon franchises such as those of this company, a franchise which conveyed the right to maintain pipes in the streets of the

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 47755

Before: ABRAHAM S. GILBERT, Special Master.

NEW YORK, April 19, 1920.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of counsel for complainant.

MR. HAYWARD, MR. CLARK and MR. NEUMANN, of counsel for Public Service Commission.

MR. JUDSON HYATT and HARRY HERTZOFF, of counsel for defendant Swann. 47756

The Master: All counsel are in attendance except Mr. Chambers, the Deputy Attorney General, who communicated with the Master by telephone before the hearing. The Master states that he informed Mr. Chambers that there was no real necessity for his being here, because the Master simply intended to deny all motions to strike out, and to hand to counsel copy of a draft report and opinion, fixing a time within which suggestions as to the report and 47757
opinion would be received. I shall therefore proceed in the absence of Mr. Chambers.

At the session held on March 22nd counsel for the various defendants made various motions to strike out parts of the testimony. All these motions that were not denied at the time they were made are now denied, and an exception is allowed to the various defendants to the ruling now made by the Master.

47758 The Master directs attention of counsel to the fact that an analysis of the report and opinion will indicate that as to some of the matters sought to be stricken out the Master has not taken the facts sought to be stricken out into consideration. The Master believes, however, that it would be better to leave the record stand as it is, leaving it for the reviewing court either to disregard the matters sought to be stricken out, or to consider them as may be deemed necessary.

In accordance with the directions contained in the order appointing the Special Master, dated May 6,
47759 1919, I am now handing to counsel for the various parties a draft of a report and of an opinion. The report is intended simply to find the facts as the Master believes the record discloses. The opinion is intended to clarify and explain the findings as stated in the report.

The Master's report contains 68 findings. A considerable number of them are formal in character, as to organization, amount of stock, etc. A considerable number of them of course are without dispute, namely, the character of the material that goes into the manufacture of gas and the residuals produced. As I say, the Master's opinion is simply explanatory.
47760 It consists of about 42 pages. I have not had a chance to revise these except to run over them and make some typographical corrections, and there may be some changes as to language. The substance of them is what I intended to convey.

I direct that any suggestions that counsel want to make with reference to this report and opinion be put in writing and filed with me on Wednesday, April 28th, 1920.

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City of New York, and it was held that the company was in possession of perpetual franchise rights in the situation of the Central Union Company, which is analogous, to the situation of this company, even if the permit originally granted to the Anthracite Company were left out of consideration. I think perhaps I would like, instead of arguing that question at length, to submit just a page or two of authorities on that point.

The Master: I wish you would. Let me have a little memorandum on the question raised by Colonel Hayward as to this franchise. Send a copy of it to Colonel Hayward.

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I wish you gentlemen would send to the office all the exhibits and tables you want me to look at, and I wish the stenographer would send me today's minutes to the office tomorrow. I will send for the stenographer, or I shall ask the stenographer to send me other volumes of the record up to the Bar Association where I arrange for a room.

Mr. Ransom: Do you want the exhibits tomorrow or tonight?

The Master: No.

Mr. Ransom: Do you want the exhibits sent to your office?

The Master: Yes, send the exhibits to my office.

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Mr. Ransom: Do you want the originals or copies where we have copies?

The Master: Copies, where you have copies.

Mr. Ransom: I take it as to books and papers, if you want any of those you will send for them?

The Master: Yes, I will send for any of those that I may want.

Mr. Chambers: Do you still stand by your statement that you do not want briefs?

The Master: Yes.

Mr. Chambers: That is what I am relying on. I

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took the Master at his word, that he did not want briefs. I did not want to hand him something that he did not want to take. I would have been very glad to have filed a brief, and would be glad to do so now, if I had time.

The Master: No. If there was any memorandum that you wanted to prepare between last week and this week, I should have taken it. If not, I do not want it.

Hearing closed.

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